

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 MICHAEL MCMAHON, ET AL.,

7 Defendant.
8 -----x

21-CR-265 (PKC)

United States Courthouse
Brooklyn, New York

June 9, 2023
9:00 a.m.

9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE PAMELA K. CHEN
11 UNITED STATES DISTRICT JUDGE
12 BEFORE A JURY

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8
9 (In open court; Jury not present.)

10 THE COURT: Good morning everyone. Have a seat.
11 Off the record.

12 (Discussion off the record.)

13 (The witness takes the stand.)

14 THE COURTROOM DEPUTY: All rise.

15 (Jury enters courtroom.)

16 THE COURT: Let's have everyone be seated except for
17 the witness, if you'll remain standing for a moment.

18 Good morning, ladies and gentlemen, I hope you had a
19 good night. The government is going to continue with its case
20 by calling its next witness.

21 MR. HEEREN: Thank you, your Honor. The government
22 calls Xu Jin. X-U J-I-N.

23 THE COURT: Mr. Jin, we have to swear you in.

24 THE COURTROOM DEPUTY: Please raise your right hand.

25 (Continued on next page.)

XU JIN - DIRECT - MR. HEEREN

1 **XU JIN**, called as a witness, having been first duly
2 sworn/affirmed, was examined and testified as follows:

3 THE WITNESS: Yes.

4 THE COURTROOM DEPUTY: Please state and spell your
5 name for the record.

6 THE WITNESS: Xu Jin. X-U J-I-N.

7 MR. HEEREN: May I proceed, your Honor?

8 THE COURT: You may. You may want to start off by
9 establishing his surname just so it's clear on the record.

10 MR. HEEREN: Yes, your Honor.

11 DIRECT EXAMINATION

12 BY MR. HEEREN:

13 Q Good morning, Mr. Xu.

14 A Good morning.

15 MR. HEEREN: Good morning, ladies and gentlemen.

16 THE JURY: Good morning.

17 Q In case it wasn't clear from my question, is Xu your
18 family name or your surname?

19 A That's my family name.

20 THE COURT: Madam Interpreter, can you tell the
21 witness to pull the microphone or can someone pull the
22 microphone closer to him because the chair doesn't move.

23 A Okay.

24 Q What is your native language?

25 A Chinese.

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1 Q And could you please move the mic just a little bit
2 closer to you, sir?

3 Do you also speak and understand -- do you speak and
4 understand any English?

5 A Very little.

6 Q Are you more comfortable relying on an interpreter to
7 assist you in today's proceeding?

8 A Yes.

9 Q Limiting your answer to the city or town and the state,
10 where did you live in 2017?

11 A I lived in Warren, New Jersey.

12 Q Are you married?

13 A Yes.

14 Q What's your spouse's name?

15 A Liu Fang.

16 MR. HEEREN: I'd like to publish what's been
17 previously admitted as Government's Exhibit 31.

18 Q Do you see Government Exhibit 31 on your screen, Mr. Xu?

19 A I see that.

20 Q Who is this a picture of?

21 A That's me and my wife.

22 Q Do you have any children?

23 A Yes. One.

24 Q What's your child's name?

25 A Xu Xinzi.

XU JIN - DIRECT - MR. HEEREN

1 Q Is that spelled X-U X-I-N-Z-I?

2 A Yes.

3 Q And Xinzi is her first name?

4 A Yes. That's her name.

5 Q Does she go by any other names?

6 A Her English name is Sabrina.

7 Q I'm showing you what's been admitted as Government's
8 Exhibit 28. If you could please publish that.

9 Who is this?

10 A That is my daughter.

11 Q And what state did Sabrina live in, in 2017?

12 A California.

13 MR. HEEREN: You can take that down now,
14 Ms. McMahon.

15 Q How long have you resided in the United States?

16 A Thirteen years.

17 Q Prior to the United States, where did you live?

18 A In Wuhan, China.

19 Q Do you have any siblings?

20 A I have a younger sister.

21 Q Where does your younger sister live?

22 A In Wuhan, Hubei, China.

23 Q I'm showing you what's been previously admitted as
24 Government's Exhibit 27.

25 Who is this?

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1 A That is my younger sister.

2 Q What's her name?

3 A Xu Qin.

4 Q Is her surname spelled X-U Q-I-N?

5 A Yes.

6 Q Does your wife Liu Fang have any siblings?

7 A She has a younger sister.

8 Q What is her name?

9 A Her name is Liu Yan.

10 Q I'd like to show you what's been previously admitted as
11 Government's Exhibit 24.

12 Who is this?

13 A Liu Yan.

14 Q What city and state did Liu Yan live in, in 2017?

15 A She lived in Short Hills, New Jersey.

16 MR. HEEREN: I'd like to show you now what's been
17 previously admitted as Government's Exhibit 902H.

18 If we can please, Ms. McMahon, crop about the
19 half -- this part of the page.

20 Q Do you recognize the location depicted in the picture in
21 902H?

22 A Yes, I know it.

23 Q How do you recognize it?

24 A That's where Liu Yan lived.

25 Q Is this where Liu Yan lived in 2017?

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1 A Yes.

2 MR. HEEREN: You can take that down, Ms. McMahon.

3 Q Mr. Xu, are your parents still alive?

4 A Yes.

5 Q Where do they live?

6 A In Wuhan, China.

7 Q I'd like to show you what's been previously admitted as
8 Government's Exhibit 30.

9 Who do we see in this picture?

10 A My father and my mother.

11 Q What is your father and mother's names?

12 A My father is called Cewei and my mother is called Dan
13 Yaoxian.

14 MR. HEEREN: Could I ask the interpreter to spell
15 that please.

16 THE INTERPRETER: Last name is Dan D-A-N, first name
17 is Yaoxian, Y-A-O-X-I-A-N.

18 Q The question now directed at the witness, is your
19 father's names spelled X-U C-E-W-E-I?

20 A Yes.

21 Q How old was your mother in 2017?

22 A Seventy-nine.

23 Q What was your mother's health condition in April 2017?

24 A She was not in a great health condition. She had high
25 blood pressure.

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1 Q How old was your father in April 2017?

2 A Eighty-two.

3 Q Did your father have any health issues in April 2017?

4 A In early 2017, he underwent surgery. In April 2017, he
5 had been having headaches.

6 MR. HEEREN: You can close that up, Ms. McMahon.

7 Q Mr. Xu, are you familiar with something called Operation
8 Fox Hunt?

9 A I don't have much understanding of it, but I have seen it
10 in the media.

11 Q What was your understanding of Operation Fox Hunt?

12 A Based on my understanding, those were the people the
13 Chinese government wanted to arrest.

14 Q To your knowledge, are you a target of Operation Fox
15 Hunt?

16 A Yes.

17 Q To your knowledge, is your wife a target of Operation Fox
18 Hunt as well?

19 A Yes.

20 Q I'd like to direct your attention to April 5th, 2017.
21 Did you receive a phone call from your sister-in-law, Liu Yan,
22 on that evening?

23 A Yes.

24 Q What did Liu Yan say on that telephone call on April 5th?

25 A She said that my father was suddenly brought to her home

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1 by the prosecutor of the prosecutor's office in Wuhan and,
2 secondly, my father wants to see me.

3 Q Did you expect your father to come to the United States
4 in April of 2017?

5 A I did not expect it at all.

6 Q Did Liu Yan tell you anything more about the officials
7 involved in bringing your father to the United States?

8 A She said somebody by the name of Dr. Li sent him to her
9 home.

10 Q Was a person named Dr. Li your father's regular doctor,
11 to your knowledge?

12 A No.

13 Q Is Dr. Li a man or a woman, if you know?

14 A She's a lady.

15 Q What did you decide to do after being told that your
16 father wanted to meet with you?

17 A At the time during the phone call we decided that to let
18 my father to stay at Liu Yan's home for that evening, then we
19 will discuss further about the next day.

20 Q Did your father spend the night of April 5th at Liu Yan's
21 house.

22 A Yes.

23 Q So now directing your attention to the following day,
24 April 6th, 2017, what, if anything, did you decide to do that
25 day as it relates to your father?

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1 A I decided to meet with my father at the Livingston Mall
2 near Liu Yan's home.

3 Q What time of day did you go to the Livingston Mall to
4 meet your father?

5 A Around between nine to 10 a.m.

6 Q Why did you plan to -- why did you decide to have that
7 meeting at the Livingston Mall?

8 A I considered that there must be some Chinese spies or
9 agents near Liu Yan's home and I did not want to be surveyed
10 or monitored.

11 Q And how did meeting at a mall help with being surveilled
12 or monitored?

13 A I think at the Livingston Mall, a commercial mall with a
14 lot foot traffic, it will be relatively safer there. That's
15 my thought.

16 Q Where at the mall did you end up meeting your father?

17 A At the food court.

18 Q And how long did you meet with your father at the food
19 court?

20 A Less than an hour.

21 Q What did you talk about with your father at the mall?

22 A Mainly my father was explaining to me why he came to the
23 United States.

24 Q And so what did he tell you?

25 A He said he was forced by the personnel of the

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1 prosecutor's office in Wuhan. He was requested to accompany
2 them to come to the U.S.

3 Q Did your father say what the purpose of his trip in
4 April 2017 was?

5 A He said that there were two purposes for him to come to
6 the U.S., that's what the officials told him. The first one
7 was to request me to return to China with him. And, secondly,
8 I was asked to not talk about --

9 THE INTERPRETER: The interpreter would like to
10 repeat the answer.

11 A And, secondly, I was asked not to speak negatively about
12 a certain leader in the U.S. before the China 19th Party
13 Congress commenced.

14 Q Did your father say anything about who came with him on
15 this trip to the United States in April of 2017?

16 A He said Tu Lan, who was the prosecutor of the
17 prosecutor's office in Wuhan, was leading the delegation and
18 he came -- he flew to the U.S. with Dr. Li.

19 Q Now I believe earlier you said that your father told you
20 he was forced to come. Can you explain what you understood
21 your father to mean when he said he was forced to come to the
22 United States?

23 A My father told me that two months before he came, the
24 personnel of the prosecutor's office in Wuhan forced him to
25 accompany them to come to the U.S., but that my father had

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1 been resisting against the idea. And Tu Lan, from the
2 prosecutor's office in Wuhan, told my father that if he did
3 not accompany them to the U.S., then my younger sister would
4 be sent to jail.

5 Q After your meeting at the mall with your father --
6 withdrawn. After your meeting at the mall, what did you do
7 next with your father?

8 A Then I drove my father back to Liu Yan's home. I went
9 into the garage and closed the garage door and let my father
10 get off.

11 Q Where did you your father stay on April 6th, 2017 after
12 you dropped him at Liu Yan's house?

13 A He stayed at Liu Yan's home.

14 Q I want to direct your attention now to the next day,
15 Friday, April 7th, 2017. Did you meet with your father on
16 that date?

17 A Yes, I did.

18 Q And on April 7th, 2017 did you bring your father anywhere
19 else?

20 A I brought my father to where I live.

21 Q Why did you bring your father to your home?

22 A It was because for that Friday Liu Yan's daughter had to
23 compete in another space and the entire family had to
24 accompany her, therefore my father had to stay at my home.

25 Q Did you notice anything when you were driving -- excuse

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1 me, let me restart that. Did you notice anything unusual when
2 you were driving to or from meeting your father on April 7th,
3 2017?

4 THE INTERPRETER: Can you repeat the date for me.

5 MR. HEEREN: Sure. Let me just repeat the question.

6 Q Did you notice anything unusual when you were driving to
7 or from meeting with your father on Friday, April 7th, 2017?

8 A After I picked up my father and left Liu Yan's home, not
9 long after that I found out there was a car that had been
10 following me so I was suspecting us being stalked.

11 Then I was circling around the communities near Liu
12 Yan's home. As I made a circles, that car had been following
13 me so I believe that indeed I was being followed.

14 And I realized that I could not get rid of this
15 following car, so I stopped my car. And that car that was
16 following me in the direction of above me, that car also
17 stopped and that car was not hiding so we were in a
18 standstill. That standstill lasted for a little while and
19 then that car left. At that moment I brought my father
20 directly home.

21 Q Do you remember anything about what that car looked like?

22 A From my impression that car was a gray Honda SUV.

23 Q How did that experience of being followed make you feel?

24 A In the beginning when I was being followed, I tried to
25 get rid of that following car as soon as possible. I was

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1 feeling afraid in the beginning. However, later on when the
2 standstill happened and that car was not hiding, then I was a
3 bit frightened. I realized that that car was not following me
4 discretely, rather it was a threat. So in the beginning I was
5 panicking but later on I was scared.

6 Q Did your father ultimately return to China?

7 A He returned to China.

8 Q How did he get back from New Jersey?

9 A I sent him to Liu Yan's home and Liu Yan sent him to the
10 airport and for his return flight that was booked by Tu Lan,
11 the Wuhan prosecutor a long time ago.

12 Q Why did your father go back to China instead of staying
13 in the United States?

14 A First of all, he was worried about the health condition
15 of my mother. Secondly, he was worried that my younger sister
16 may be sent to the jail again.

17 Q Did you agree to return to China after your father came
18 in April of 2017?

19 A No.

20 Q Did you contact U.S. law enforcement about this incident?

21 A Yes, I reported it to the FBI.

22 MR. HEEREN: I'd like to now show you what's been
23 admitted into evidence as Government's Exhibit 437. And if we
24 could before we blow it up, if we could show both pages,
25 please.

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1 Q Going back to the first page of these two pages of notes,
2 do you recognize -- well, what do you understand this to be,
3 the first page of notes in Government Exhibit 437?

4 A That is the content provided by the Wuhan prosecutor's
5 office personnel to my father for him to fill out the arrival
6 card in the U.S.

7 Q And how do you know that?

8 A My father showed it to me.

9 Q Is that your father's handwriting?

10 A No.

11 Q Does your father know how to write in English?

12 A No, he cannot.

13 Q And now I want to show you page two, the second page of
14 notes.

15 If you can just blow that up please. Thank you.

16 What did you understand this to be?

17 A These are the contact phone numbers given by the
18 officials to my father.

19 Q And in particular, what officials' phone numbers were
20 included here?

21 A Here it contains mainly two parts. The top three numbers
22 are the number of my parents' home and the phone numbers of my
23 parent, and the bottom three telephone numbers are the numbers
24 of the officials in Wuhan City and also the phone numbers of
25 two personnel from the prosecutor's office in Wuhan.

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1 MR. HEEREN: If we can just please show this side by
2 side with Government's Exhibit 438, which has also been
3 previously admitted. If you can just publish both sides for
4 the jury, please.

5 Q Mr. Xu, what was your understanding as to why your father
6 was given this list of phone numbers?

7 A My father told me that it was mainly about requesting him
8 to call Tu Lan every day.

9 MR. HEEREN: You can take that down now.

10 Q Did your father bring a phone with him from China to the
11 United States in April of 2017?

12 A Before he came, the prosecutor's office gave him a phone
13 which was an old style flip phone, but it was brand new.

14 Q How did your father's unexpected arrival in April of 2017
15 make you feel?

16 A My first impression was that I was in shock. And my
17 second feeling was that I was very angry.

18 It was because earlier in that year my father had
19 the surgery done and his health condition has been weakened,
20 and previously he had a brain hemorrhage and started saying
21 that he's getting headaches. My family members were very
22 concerned and worried about his conditions; however, under
23 such condition he was still being forced to come to the U.S.
24 It was very shocking. First of all, it was very shocking for
25 me to see that being done and, secondly, I was very angry

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1 because the Wuhan officials and the prosecutor's office did
2 things like this to an 80 some what year old man and he had a
3 bad health condition and he was being forced to come to the
4 U.S. I was very angry about that.

5 Q I want to direct your attention now to September 4th of
6 2018. Did something unusual happen on that day?

7 A On that morning around 10 a.m. two strangers, two men
8 came to my home.

9 Q You said two strangers, but just to be clear, first did
10 you see them?

11 A At that time I was in the kitchen and I heard that
12 pounding sound on the door. It was not like normal knocking,
13 it was pounding so I was alarmed. And then I approached the
14 door and I realized that the people outside, they were
15 twisting the door handle forcibly and I determined that it was
16 not a normal visitor because a normal visitor would not twist
17 the door handle forcibly and try to get in.

18 Q So just to -- was anyone else home with you?

19 A My wife was at home too.

20 Q So did you do anything -- what did you do next?

21 A Then I turn on the surveillance video camera to see who
22 is coming and what they were doing.

23 Q Can you describe either of the two men -- did you see the
24 two men -- withdrawn. Let me start over.

25 Did you see either of the two men when you turned on

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1 your surveillance camera?

2 A I saw two young men, one of them was well built and the
3 other one was a skinnier one he dyed his hair blond. They
4 both have Asian faces.

5 Q After knocking on your front door, did you see these two
6 men go anywhere else on your property?

7 A According to the video which I had been watching, after
8 they left the front door they went to the backyard and went up
9 to the deck and they were looking at the windows of the
10 sunroom to peek inside.

11 And the one with the blond hair was taking a lot of
12 pictures. He was taking all the corners of my home.

13 Q Did you see either of the men using a phone?

14 A Yes, the one with the blond hair.

15 Q Was either of the two men smoking?

16 A I saw that the skinnier man, the one with the blond hair,
17 has cigarette in his hand.

18 Q Did the two men eventually leave your property?

19 A They left eventually.

20 Q Did you see how they left?

21 A After they left they went back to their car and then they
22 returned to the front door for the second time and they were
23 doing something there; I could not tell. I was just looking
24 at it from the surveillance camera.

25 After they left the front door for the second time,

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1 they returned to the car and then they were at the street by
2 the door and they were taking pictures again. They were
3 discussing something, but I did not know what they were
4 talking about.

5 Q I want to show you what's been previously admitted as
6 Government's Exhibit 108. What do we see depicted in this
7 photograph, Mr. Xu?

8 A This is showing the two people who went up to the deck in
9 the back and they were looking into the home.

10 Q And where is this picture taken from, what room is that?

11 A This photo was taken from the sunroom towards the
12 direction of the deck.

13 Q And to be clear, is this image from the surveillance
14 footage, your home surveillance footage?

15 A Yes.

16 MR. HEEREN: You can take that down, Ms. McMahon.

17 Q After the two men left, what did you do?

18 A I reported it to the FBI.

19 Q And what did you do after that?

20 A The FBI asked us to go outside and check what's going on
21 to see what they've done. So I checked the front and the
22 back. Since they have been there twice and also they went to
23 the back as well, so the FBI asked us to check and see what
24 they have done. As soon as I opened the door I realized that
25 they had posted a note on the door.

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1 Q When you say the door, are you referring to your front
2 door or your back door?

3 A The front door.

4 Q How many notes did you see on the front door?

5 A One note.

6 Q Where on the door was the note placed?

7 A The bottom half of the door.

8 Q How was it attached to the bottom half of your front
9 door?

10 A It was pasted with the wide transparent tape.

11 Q What language was the note in?

12 A Chinese.

13 Q Do you remember what the note said?

14 A I cannot remember very clearly. It roughly said, if I'm
15 willing to return to China to spend 10 years in jail, then my
16 wife and my daughter will be let go.

17 Q How did the note make you feel with regard to your wife
18 and daughter?

19 A When I saw that note my reaction at the time was that I
20 had two feelings. Before I saw this I felt that the threats
21 from the Chinese Communist Party was only a mental threat to
22 me; however, when I saw that note, I realized that it had
23 become a physical threat and it is close first to my life.
24 That is how I feel at the time. That's my first feeling.

25 Secondly, I feel that I was very worried about my

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1 wife and my daughter. I've become the target of the Chinese
2 government and they have become the subjects of the
3 persecution. I was very worried about their safety.

4 Q After you saw the note, what did you do next?

5 A At the time I called the FBI, I said I saw this note and
6 they asked me what did the note say and I told them. Then the
7 FBI asked me to go to the kitchen and put on the rubber gloves
8 to take down the note and keep it safely.

9 Q Before you took down the note, did you take a photo of
10 it?

11 A Yes. Yes, the FBI asked me to take a picture, so I took
12 a picture and that was what they requested.

13 Q Did you take any precautions before taking the note down?
14 Forgive me if you said that, I might have just missed it in
15 your answer.

16 A The FBI asked us to put on the rubber gloves in order to
17 take it down and then put it in a plastic bag.

18 Q And who took the note down yourself, your wife, or both
19 of you together?

20 A My wife took it down and I was holding the plastic bag
21 for her to put it in.

22 Q I'd like to show you what's been previously admitted as
23 Government's Exhibit 505B. If you could just call out the
24 picture itself.

25 Mr. Xu, what do we see in this photograph,

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1 Exhibit 505B?

2 A That was the note I found. It was posted on my door of
3 my home.

4 MR. HEEREN: You can take that down.

5 Q Did anything happen the following day?

6 A On the second day, at a time that was earlier than the
7 first day, the chubbier guy, the one in the white top, came
8 again.

9 Q What did you see him do?

10 A Since the surveillance video gave us some caution, then
11 we had been looking at him through the surveillance camera we
12 saw him walking. He was walking towards the door and then
13 stayed there for a little while and then he left.

14 Q What did you do when you saw the man in the white top
15 return on the second day?

16 A After they came on the first day I reported it to the FBI
17 and the FBI agent told us that they would come again and, if
18 they come again, then you call the local police station and we
19 would alert the local police station to come as soon as
20 possible. Therefore, when they came again as we expected,
21 then we followed the instructions of the FBI. So when he was
22 still there I called the local police in Warren.

23 Q Was your wife home with you on the second day as well?

24 A Yes.

25 Q After the man in the white top left on the second day --

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1 withdrawn. Let me start that question over. Did you see how
2 the man left that day?

3 A When he left he got into the white car, the same car that
4 he came with.

5 Q And after the man left, what did you do?

6 A In a very short period of time the local police came.

7 Q Did the FBI also come at some point in time?

8 A After the local police came, within half an hour the FBI
9 came.

10 Q Once the FBI came, what, if anything, did you do with
11 them?

12 A Once they came I showed them the footage of the
13 surveillance camera record.

14 Q What else did you do?

15 A And then I brought the FBI to walk around the route, the
16 path the two men took on the first day and also the path the
17 man in the white top took on the second day.

18 Q Did you see anything around your house when you walked
19 with the FBI in the areas where these two men went?

20 A The earliest thing we discovered was that at the
21 left-hand side of the door there was a piece of crumbled paper
22 which was shown in the video footage. It was the man in the
23 white top who threw it.

24 Q When you say crumpled paper, can you describe again where
25 exactly did you find this crumpled paper?

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1 A Yes, it was under a tree on the left-hand side of the
2 home.

3 Q Did you touch or open that paper?

4 A No. The FBI personnel picked it up and they brought it
5 away with them.

6 Q So do you know what was contained in the crumpled paper?

7 A I don't know, I have not seen it.

8 Q Did you find anything else when you were looking around
9 your property?

10 A We played the video footage again and according to the
11 location it was shown in the footage where he threw the
12 cigarette butt, we found that cigarette butt.

13 Q When you say "we" who saw the cigarette butt?

14 THE WITNESS: FBI.

15 A I meant I, with the FBI, because I brought the FBI there
16 and they saw the cigarette butt.

17 Q Okay. I want to show you what's been previously admitted
18 into evidence Government's Exhibit 503A.

19 And can you please tell us what location does this
20 photograph depict?

21 A That was the driveway.

22 (Continued on the next page.)

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XU JIN - DIRECT - MR. HEEREN

1 DIRECT EXAMINATION (Continued)

2 BY MR. HEEREN:

3 Q The driveway of your residence?

4 A Yes.

5 MR. HEEREN: And for the record, we're looking at
6 page 1 of 503A.

7 And, Ms. McMahon, if you can blow up the bottom
8 portion of the image. Thank you.

9 Q What do you see in this portion of the image at the
10 left-hand corner of what appears to be the driveway?

11 A The cigarette butt.

12 Q And is this the cigarette butt you were referring to?

13 A Yes.

14 MR. HEEREN: You can close that up.

15 Q Mr. Xu, did you do anything in response to this incident
16 in September of 2018 related to your home or personal
17 security?

18 A I reinforced the lock for every home in my door. And I
19 also purchased a metal baseball bat.

20 Q I want to now direct your attention to 2019.

21 Did there come a time when you or your family
22 members began receiving anything unusual in the mail?

23 A Yes. Yes. Liu Yan home received a lot of mail from
24 Wuhan.

25 Q And when you say "a lot," how much mail, approximately,

XU JIN - DIRECT - MR. HEEREN

1 did Liu Yan's home receive from Wuhan, China?

2 A It was almost like getting one piece -- one letter from
3 Wuhan every week, and it was a strange piece of mail.

4 Q And who were these mailings -- did you have an
5 understanding of who these mailings were supposed to have come
6 from?

7 A They were mailings from Wuhan, and some of them, or most
8 of them, was sent in the name of my younger sister to Liu
9 Yan's home.

10 Q And did you review or look at any of these mailings?

11 A I read the first one, but I did not read the subsequent
12 ones.

13 Q And when you say you "read the first one," did you open
14 it and look at what was inside?

15 A Yes.

16 Q And what did it contain?

17 A It was a letter returned in the name of my youngest
18 sister.

19 Q Did you have an understanding of whether this was
20 actually written by your younger sister or not?

21 A The handwriting was written by my younger sister,
22 however, the content was not especially how we call each
23 other. It was very strange. It was unlike how we usually
24 call each other, and it was apparent that it was not her talk.

25 Q When you say "it was not like you call each other," what

XU JIN - DIRECT - MR. HEEREN

1 are you referring to? Do you mean like a nickname?

2 A Yes. Yes, we used to write letters to each other, but we
3 did not call each other that way.

4 Q Did you expect to receive these mailings that came in
5 2019?

6 A No.

7 Q What did you and your family decide to do about these
8 mailings?

9 A We report it to the FBI. Initially the FBI said you can
10 just return those mails. And after a while, the FBI said if
11 the mail comes again, then you can give them to us.

12 Q And so did you attempt to send back some of this mail?

13 A Yes, returned them.

14 Q And did you provide any of these mailings to the FBI?

15 A Yes. Yes. Especially there was an instance that
16 Instagram they mail a CD ROM. I did not know what it is, but
17 I felt it was hard, and it felt like CD ROM, so that was given
18 to the FBI.

19 Q Did you ever watch what was on the CD ROM?

20 A No, I did not see it.

21 MR. HEEREN: I want to show you what's been
22 previously admitted as Government's Exhibit 506B.

23 (Exhibit published.)

24 Actually, I want to start with 507B, please. Also
25 admitted previously.

XU JIN - DIRECT - MR. HEEREN

1 If you could just turn the first page, please.

2 I want to show you all of the pages, and then I'm
3 going to ask you a question about it, Mr. Xu.

4 If you can just blow up that page a little bit
5 bigger first so that Mr. Xu can see it.

6 And then let's go to the next page. Actually, we
7 can scroll to the third page, and I can ask my questions.

8 We can go back up to the -- that's fine, too. Yes,
9 why don't we use this page and just blow it all up.

10 Q So what is depicted in Government's Exhibit 507B?

11 A That was the first letter from my younger sister that was
12 sent to Liu Yan's home.

13 Q Is this the letter that you mentioned opening?

14 A Yes.

15 MR. HEEREN: Now I want to show you Government's
16 Exhibit 506B.

17 If you can just flip through the pages, you don't
18 need to call anything out.

19 (Exhibit published.)

20 Q What is depicted in Government's Exhibit 506B?

21 A That's another mail that was sent to my --

22 THE INTERPRETER: Interpreter would like to amend
23 the answer.

24 A That was another piece of mail that was sent by my
25 younger sister to Liu Yan's home.

XU JIN - DIRECT - MR. HEEREN

1 Q And we see another person's name on this mailing. I
2 believe it says Bai, B-A-I, Xu, X-U.

3 Do you have an understanding of who Bai Xu is?

4 A That's the husband of Liu Yan.

5 Q Okay. And then below that name, what address is listed
6 on the first page of 506B?

7 A That is the address of Liu Yan's home.

8 MR. HEEREN: You can take that down now.

9 Q The incidents in 2017, 2018 and 2019, how have all of it
10 together did that make you feel?

11 A Regarding my feelings, first of all that was --

12 THE INTERPRETER: Interpreter needs to clarify
13 first.

14 A First of all, I felt frightened because it was not only
15 to my personal safety, it was also a threat.

16 And secondly, I was very angry because the measures
17 of the prosecutors they have performed was not only on me, it
18 was also towards my parents, my younger sister, my wife, and
19 my daughter. They did not let go of any one of them, so I was
20 very angry.

21 Q Did you have an opportunity to observe how this affected
22 your wife?

23 A She was under a lot of pressures, because she would never
24 imagine that things like this would happen to her.

25 MR. HEEREN: One second, Your Honor.

XU JIN - CROSS - MR. LUSTBERG

1 (Pause in the proceedings.)

2 MR. HEEREN: No further questions, Your Honor.

3 THE COURT: Thank you, Mr. Heeren.

4 Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. LUSTBERG:

7 Q Good morning, Mr. Xu. I just have few questions. So I
8 just want to go back over the dates.

9 You learned that your father had come on April 5th,
10 2017, correct?

11 A Yes.

12 Q And on April 6th, 2017, you met him at the Livingston
13 Mall; is that right?

14 A Yes.

15 Q You didn't say whether you had any -- you were being
16 followed when you went to the Livingston Mall.

17 Did you notice whether you were being followed when
18 you went to the Livingston Mall?

19 A I did not realize that.

20 Q And then you said that on April 7th, 2017, you were in
21 the car with your father and you did circles around town.

22 Do you remember that?

23 A I remember.

24 Q And that was because you thought you were being followed
25 that day, right?

XU JIN - CROSS - MR. LUSTBERG

1 A Yes.

2 Q And that was the date that you thought you were being
3 followed by somebody in a gray Honda SUV, correct?

4 A Yes.

5 Q Did you see the person in the gray Honda SUV who was
6 following you?

7 A I could not see it clearly.

8 Q But do you know whether it was an Asian person or a
9 non-Asian person?

10 A I did not see it clearly because I was panicking. I was
11 trying to get rid of him. So I was a bit scared and I did not
12 pay attention to the face.

13 Q And you did get rid of him, correct?

14 A Later on when we were in a standstill, that car later on
15 left, I could not get rid of it.

16 Q I'm sorry, could not?

17 A I could cannot get rid of it.

18 Q Okay.

19 There came a time when you were at a standstill and
20 then after that you drove some place else, correct?

21 A Yes.

22 Q Just to make sure I understand. You were doing circles
23 around the neighborhood in Short Hills; is that right?

24 A Yes.

25 Q And then after you left and went some place else, then

XU JIN - CROSS - MR. LUSTBERG

1 you didn't see that you were being followed any more; is that
2 right?

3 A I did not see it. I did not pay attention to it.

4 Q Okay. I want to understand one part of your testimony
5 earlier.

6 You said, in response to Mr. Heeren's question,
7 about how you felt after you saw those two men at your house
8 in Warren.

9 By the way, you still live in that house in Warren?

10 MR. HEEREN: Objection, Your Honor.

11 THE COURT: Sustained.

12 MR. LUSTBERG: Your Honor, may I be heard?

13 THE COURT: Yes.

14 (Continued on the next page.)

15 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 (The following occurred at sidebar.)

2 MR. LUSTBERG: Judge, I want to steer clear if the
3 answer to that would endanger a witness' security.

4 One of the aspects of the testimony that he feels
5 scared as a result of this, and he's still living in that home
6 that would go to the extent of his fear about being in that
7 place to make sure it was fact.

8 MR. HEEREN: Your Honor, I think that -- I think our
9 questions were geared towards how he felt at the time, not how
10 he feels now, because the relevant determination is whether
11 there was intent to put him in substantial emotional distress
12 at that time.

13 Whether he's still in substantial distress is
14 irrelevant.

15 MR. LUSTBERG: I mean -- I'm sorry, Judge.

16 THE COURT: Let's do this, it's 11:15, so I'm going
17 to give the jury a break. So why don't we take this up then.

18 MR. LUSTBERG: Yes.

19 (End of sidebar conference.)

20 (Continued on the next page.)

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PROCEEDINGS

1 (In open court; Jury present.)

2 THE COURT: So, ladies and gentlemen, we will take
3 our morning break now. So be ready to go at 11:39.

4 Don't take about the case. Don't do any research.
5 Keep an open mind.

6 THE COURTROOM DEPUTY: All rise.

7 (A recess was taken at 11:15 a.m.)

8 THE COURT: The witness can step down.

9 (The witness steps down.)

10 THE COURT: So let me say this to the parties, and
11 everyone else in the audience, you're free to go.

12 To the parties, why don't you come back in about
13 five minutes, if you can, just hustle back so we can have this
14 conversation. I think we're still going do it at sidebar,
15 given the nature of the discussion, so I'll see you in about
16 five minutes.

17 (A recess was taken at 11:17 a.m.)

18 (Continued on the next page.)

19 (Sidebar conference.)
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SIDEBAR CONFERENCE

1 (The following occurred at sidebar.)

2 THE COURT: So I understand.

3 MR. LUSTBERG: My point --

4 THE COURT: No, I understand your point. I wanted
5 to hear from the government because you have raised a fear
6 issue.

7 MR. HEEREN: So I think, Your Honor, we went back
8 and checked the charge period. The charging period for the
9 two stalking charges was December 2019. I think a fair
10 question would be, or fair inquiry would be whether he moved
11 after a specific time period. My concern is about his current
12 address, so I think it is, I'll concede, relevant in terms of
13 after April 2017 he didn't move, those sorts of questions.

14 I don't know if I'm being clear enough.

15 THE COURT: No, but I think ultimately you don't
16 want defense counsel to ask after 2019 mainly, did you
17 relocate. That's your concern. Because that would obviously
18 provide some evidence as to where he lives now.

19 MR. LUSTBERG: Judge, just so it's clear, I'm
20 finding him to be incredibly sophisticated witness here. I
21 Googled him this morning, and it comes up to that address.

22 THE COURT: I mean the bottom line is he hasn't -- I
23 mean, although I was going to ask you -- sorry, but I didn't,
24 we started my sentence, so perhaps I was going to suggest you
25 ask him if he took any measures to -- took any protective

SIDEBAR CONFERENCE

1 measures after each of these incidents, but I think ultimately
2 whatever he says, yes or no and describes them, I think it's
3 fair for him to say did you move?

4 MR. HEEREN: Your Honor, I think my concern just
5 remains his current address. And I understand what
6 Mr. Lustberg said about Google, but I would be remiss if I
7 didn't note that part of the reason why he was complicit in
8 providing of his current address is the work done to surveil
9 him in this case, as well as the other facts surrounding this
10 case.

11 So it feels a little bit --

12 THE COURT: Hang on a second.

13 If someone can Google where he lives now, is your
14 concern that you don't want him confirming on the record that
15 he actually still lives there?

16 MR. HEEREN: Yes, Your Honor. I think there is a
17 material difference between a person under oath saying in a
18 trial transcript and information that's coming out in the
19 press. I actually haven't Googled him, I haven't seen it yet,
20 I take Mr. Lustberg's word for it.

21 But the fact remain that there's a material
22 difference. I think there would be a material difference for
23 the witness to be asked a question like that about where he
24 lives on the witness stand, and I think the impact on the
25 witness relative to the relevance of such a question is

SIDEBAR CONFERENCE

1 outweighed.

2 THE COURT: I do think that the witness -- the
3 victim in this case should not be required to confirm under
4 oath his current location and home address. I do think, of
5 course, as the government concedes, you should be able to ask
6 whether he moved after 2017 or 2018 incident.

7 The 2019 one actually did not involve his home, they
8 went to his sister-in-law's home. So I don't think, just as a
9 matter of weighing the probative prejudicial value, I don't
10 think it's as relevant, certainly to the first two questions,
11 and also there is a security concern here, notwithstanding the
12 fact that his address, at least on public record, appears to
13 be the same, but I do think there's a qualitative difference
14 in him confirming that under oath on the record.

15 Do you see my concern?

16 MR. LUSTBERG: Yes.

17 THE COURT: So I think that you will get what I
18 think you are entitled to and need, in terms of your argument
19 about his fear not being so great when he didn't move after
20 people came to his home in 2017.

21 And I shouldn't say came to his home in 2017, but
22 clearly after people came to his home.

23 MR. LUSTBERG: I understand that. Just so that the
24 record is clear, I understand and am sympathetic to the
25 security concerns.

SIDEBAR CONFERENCE

1 The way we've dealt with security concerns in this
2 case, in addition to the CIPA process that I was not a part
3 of, is through things like the redactions.

4 Security issues are important, but they're not
5 evidence. The question here is so -- I mean when you're
6 balancing probative value you prejudice, you're not really
7 balancing it against the prejudice in the evidentiary sense,
8 you're balancing against security concerns.

9 And just so the record is clear, I don't think,
10 respectfully, that an appropriate analysis under Federal
11 Rule 403, so I just want to the record to be clear, I will
12 follow the Court's direction.

13 I also will say this. I think that whether somebody
14 is scared today is probative of whether they were scared a few
15 years ago. It don't dispose of the issue but, you know, it
16 doesn't satisfy the Rule 401 type of relevance, I don't think
17 it's correct.

18 THE COURT: No, that's a fair point. But I don't
19 know if it helps you much, because more concern, an
20 overarching one about risk of security, a security risk rather
21 presented to the witnesses which can justify preclusion
22 evidence as a general matter. And I do have the discretion
23 and the authority to weigh or consider in deciding whether to
24 preclude certain lines of cross-examination or inquiry.

25 So you are correct I think strictly speaking it's

SIDEBAR CONFERENCE

1 not a probative prejudicial way under 403 or anything like
2 that.

3 Though, I do also note that I don't think the
4 defense will be substantially harmed or prejudiced in some way
5 by not getting into the additional questions about his current
6 whereabouts, as opposed to his failure move after the 2018
7 incident, because I think there you still get what you need to
8 make your argument about whether the jury should believe he
9 actually wasn't afraid.

10 So just to clarify, while I do believe that perhaps
11 the analysis isn't really one under 403, per se, I have
12 exercised my authority to take into consideration alleged or
13 perceived or potential risk of harm to a witness.

14 And keeping it just to invasion, if it's an invasion
15 of is privacy, you know, I mean I consider that as well. But
16 here the allegations are that the Chinese government was
17 certainly for a period of time and may certainly still be
18 interested in repatriating Mr. Xu, X-U. And then also I have
19 concern that the press might also sort of seek to invade his
20 privacy and become -- and this has happened in my case in
21 FIFA, where there was a lot of foreign press that were
22 interested.

23 So for all of those reasons, I am going to curtail
24 some of the examination and limit you to only asking about the
25 period following the 2018 incident.

SIDEBAR CONFERENCE

1 MR. LUSTBERG: Okay, so what I would ask and make
2 sure it's okay, I'll say did you move after 2017? Did you
3 move after 2018?

4 THE COURT: After the 2018 incident.

5 MR. LUSTBERG: After -- correct, after 2017, those
6 dates April in 2017, and after the 2018 incident in September.

7 THE COURT: Right. Right, I guess the problem from
8 the government's perspective is that encompasses currently, so
9 I wonder if -- can you say in response to the 2018 incident
10 did you relocate?

11 MR. LUSTBERG: Sure. I understand the point you're
12 getting at.

13 THE COURT: Prior to that.

14 MR. LUSTBERG: Sure.

15 THE COURT: Thank you, everyone. I appreciate your
16 considerations.

17 MR. LUSTBERG: No problem.

18 (End of sidebar conference.)

19 (Continued on the next page.)
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XU JIN - CROSS - MR. LUSTBERG

1 (In open court; Jury not present.)

2 THE COURT: We are ready for the jury.

3 MR. LUSTBERG: For the record, I'll withdraw the
4 question.

5 (Pause in the proceedings.)

6 THE COURTROOM DEPUTY: All rise.

7 (Jury enters the courtroom.)

8 THE COURT: Please be seated, everyone.

9 You may proceed, Mr. Lustberg.

10 MR. LUSTBERG: Thank you very much, Your Honor.

11 I'll withdraw the last question and rephrase.

12 CROSS-EXAMINATION (Continued)

13 BY MR. LUSTBERG:

14 Q Mr. Xu, in response to the events that occurred in April
15 of 2017, did you change your residence?

16 A I did not make that change in 2017.

17 Q Okay. And in response to the events that you described
18 earlier today that occurred in September of 2018, did you move
19 from that residence?

20 A Can you repeat your question again?

21 Q Sure. Let me just backtrack a little bit.

22 You said that the events that occurred in September
23 of 2018, where the two men came to your house, made you feel,
24 whereas before it had been a mental threat, now it was a
25 physical threat.

XU JIN - CROSS - MS. WONG

1 Do you remember testifying to that?

2 A Yes.

3 Q And as a result of -- and in response to that, did you
4 move from that home in Warren, New Jersey?

5 A No.

6 MR. LUSTBERG: Your Honor, I have no further
7 questions.

8 Thank you, sir.

9 THE COURT: Thank you very much, Mr. Lustberg.

10 Cross-examination Ms. Wong.

11 CROSS-EXAMINATION

12 BY MS. WONG:

13 Q Good morning, Mr. Xu, I have some questions for you
14 regarding the testimony you just provided.

15 Mr. Xu, is it your understanding that if you go to
16 China, mainland China, you will be put into jail?

17 MR. HEEREN: Objection, Your Honor.

18 THE COURT: Let's have a quick sidebar on this.

19 (Continued on the next page.)

20 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 (The following occurred at sidebar.)

2 MS. WONG: Your Honor, I am not in any way asking
3 about the truth or falsity about the allegations in China, it
4 is not relevant. What is relevant here is his belief if he
5 goes to China that he is going to be placed in jail. And that
6 makes a person fearful. It has absolutely nothing to do with
7 whether he committed a crime, he did not commit a crime.

8 THE COURT: I think the problem I'm having, though,
9 is his going back to China, and his fear of being arrested if
10 he goes back to China, isn't particularly relevant to the fear
11 he's expressing here, which is that there's been an effort,
12 and there may continue to be an effort to the force him to go
13 back to China.

14 So my concern is that you're moving towards or
15 focusing the jury in some ways on the prosecution, if there is
16 one in China and what happened over in China, whereas the
17 focus really ought to be on what are his fears here and
18 whether or not he has any fear of any continuing effort to
19 re-patriate him. That's my concern.

20 MS. WONG: Your Honor, respectfully, his fear, the
21 reasonable fear, is an element of the events here. And he is
22 here in the United States, and he has fears going into this
23 entire experience.

24 So it is a completely relevant analysis as to
25 whether -- what are his feelings prior to the events and after

SIDEBAR CONFERENCE

1 the events.

2 THE COURT: But fear of what? Your focussing --
3 hang on, fear of being jailed, if he goes to China. But the
4 case is really about what is his fear as a result of these
5 approaches by the Chinese government and the U.S. government
6 argues are harassing or intimidating.

7 MR. LUSTBERG: Yes, Your Honor. However, it is also
8 important to analyze his credibility and his veracity here, as
9 he may have personal interest in staying in the United States,
10 and his fear about going to China does influence his
11 testimony.

12 THE COURT: You know what, I don't quite agree with
13 you, but I'm going to allow you one question. I don't want to
14 you follow up about what happened in China or what might
15 happen in China, other than this one question, that does he
16 fear that if he goes back to China he will be put in jail.

17 MS. WONG: Your Honor, I do have one more question,
18 which I think will be objected to and subject to a sidebar.

19 He had mentioned a certain leader in his direct
20 statement and I was just -- in his direct testimony, and I was
21 just going to ask if that certain leader, who is Hongzhong Li,
22 H-O-N-G-Z-H-O-N-G, last name, L-I, which is a person who is a
23 government exhibit, they have put his picture up, and that was
24 going to be it.

25 MR. HEEREN: So the reason that that exhibit is in

SIDEBAR CONFERENCE

1 is because it's a picture of that government official with
2 Jason Zhu, which was found on Jason Zhu's iCloud account.

3 The answer to the question, I expect, will be he
4 does know that person. And my concern is, and the reason why
5 we didn't elicit it, because I think there's a version that we
6 could have elicited, is that it gets into exactly what the
7 Court was talking about, which is the details of why the
8 Chinese government's targeting and we have --

9 THE COURT: Steered clear.

10 MR. HEEREN: -- steered clear of that for that
11 reason.

12 To the extent there's any -- I fail to understand
13 how the picture that we put in for Jason Zhu to show a
14 connection between Jason Zhu and a Chinese government official
15 has any relevance as to what Ms. Wong's inquiring about.

16 THE COURT: Right. My concern, Ms. Wong, is you're
17 going to say it goes somehow to his credibility, namely, why
18 is he claiming that the Chinese government is after him when,
19 in fact, perhaps he has some personal dispute with this
20 Chinese official, right?

21 That's my concern. But I don't want you raising
22 these questions that somehow whatever his conflict is with
23 Chinese officials in China has any bearing on this case.

24 MS. WONG: Right.

25 THE COURT: Why the Chinese government is after him.

SIDEBAR CONFERENCE

1 MS. WONG: It seems to me like the jury is very
2 selectively hearing portions of this story and perhaps they --
3 this gives it a broader context and helps explain the nature
4 of what's happening here. And I --

5 THE COURT: When what --

6 MS. WONG: -- is something that --

7 THE COURT: No, it's not his identity, you want to
8 say you know this person, right?

9 MS. WONG: I want to say -- I want to ask is the
10 person that you identified as the leader, or was this person
11 Hongzhong Li --

12 THE COURT: Certain leader who you criticized?

13 MS. WONG: No. He received a message from his
14 father saying to stop giving opinions about this certain
15 leader, and this leader was Mr. Li --

16 THE COURT: Right.

17 MS. WONG: -- and that's it. That's the only thing.

18 THE COURT: Again, what's the relevance of him
19 saying, yes, that is the leader my father told me about. You
20 can ask the government but, okay, in proving up that this
21 official is pushing for this man to be repatriated.

22 MR. HEEREN: And he's connected to another defendant
23 in the case. I agree, Your Honor, but we agree with you that
24 getting into the weeds of why the Chinese government is
25 targeting him is not relevant to the inquiry, which is once

SIDEBAR CONFERENCE

1 he's targeted, what is, one, are people here doing with the
2 Chinese government and, two, does it amount to interstate
3 stalking?

4 THE COURT: I mean I guess it gets us back to how do
5 you intend to use that additional piece of information, which
6 is the fact that the person whose father told him not to
7 criticize the same person the government said had
8 communications with Mr. Xu.

9 In other words, what are you going to do with this
10 information? I'm just trying to figure out why it's relevant
11 and whether or not it could be used for a purpose that I'm
12 concerned about.

13 MS. WONG: Potentially it would be my closing. I
14 have not prepared my closing, it was just information that I
15 think is relevant for the jury to know.

16 If the Court doesn't wish -- doesn't think that it's
17 relevant for the jury to know, we can exclude that.

18 THE COURT: I'm not articulating, namely you, you
19 haven't articulated to me yet why it's relevant. That's why
20 I'm trying to figure out.

21 MS. WONG: No, I won't ask it.

22 THE COURT: All right, so go ahead and ask your next
23 question.

24 (End of sidebar conference.)

25 (Continued on the next page.)

XU JIN - CROSS - MS. WONG

1 (In open court; Jury present.)

2 THE COURT: Yes, please continue.

3 MS. WONG: Your Honor, I believe that there was a
4 question pending, which I can -- if you like, I can --

5 THE COURT: Why don't withdraw that one and ask a
6 different one or repeat that one.

7 CROSS-EXAMINATION (Continued)

8 BY MS. WONG:

9 Q Mr. Xu, is it your understanding if you go to mainland
10 China you will be imprisoned?

11 THE COURT: I'm just going to modify the phrasing a
12 little bit, belief versus understanding, is it your belief
13 that you will be arrested?

14 A It would be, Your Honor.

15 Q I'm sorry, I don't understand. It would be -- so, yes,
16 you do believe you would be jailed?

17 A I believe I would be jailed, and it would be beyond just
18 being jailed.

19 Q Can you please explain what beyond just jail would be?

20 MR. HEEREN: Objection, Your Honor.

21 THE COURT: Overruled. I will allow this one
22 question.

23 Can you clarify what you meant?

24 A It would be very likely that I would be disappeared, or
25 it will be very likely that I will be sentenced for that.

XU JIN - CROSS - MS. WONG

1 Executed.

2 Q Does that scare you?

3 THE COURT: You said "executed"?

4 THE INTERPRETER: Yes.

5 THE COURT: Okay. Go ahead.

6 Q Does that you scare you, Mr. Xu?

7 MR. HEEREN: Objection, Your Honor.

8 THE COURT: Overruled.

9 A Yes, I will be scared.

10 Q And you had testified earlier on direct that your sister
11 had been sent to jail; is that correct?

12 A In the beginning when they forced my father to come to
13 the U.S., they put my younger sister in jail. Once my father
14 agreed to accommodate them to come to the U.S., then they
15 released my sister.

16 However, when my father returned to China, they sent
17 my younger sister to the jail again.

18 Q And does that make you feel frightened?

19 A Yes, I'm worried.

20 Q You testified earlier that something unusual had happened
21 on September 4th, 2018; is that correct?

22 A Yes.

23 Q However, didn't you and your wife meet with FBI agents at
24 your residence only about two weeks before August 21st, 2018?

25 A I don't remember.

XU JIN - CROSS - MS. WONG

1 Q You don't remember.

2 Do you remember on August 14th, 2018 a black sedan
3 driving up to your residence?

4 A I don't remember the specific timing, however, I do
5 remember there was a black vehicle that was -- turned into my
6 home.

7 Q And do you remember if that had occurred in the summer of
8 2018?

9 A Around that time it is possible, it would be very
10 possible.

11 Q And did you report that black sedan to the FBI?

12 A I did report it.

13 Q So you had testified on September 4th that two men had
14 gone to your residence and had approached your front door and
15 had knocked on your door, correct?

16 A Yes.

17 Q And you reported -- and you described that knocking as
18 very loud; is that correct?

19 A Yes.

20 Q Mr. Xu, I would like you to demonstrate for the jury the
21 knocking, as it had appeared to you, on September 4th, 2018?

22 And, Your Honor, would it be possible for Mr. Xu to
23 do that at the door?

24 THE COURT: No. He can stand, if you like, if you
25 want him to gesture or demonstrate how loud it was.

XU JIN - CROSS - MS. WONG

1 MS. WONG: I would like him to demonstrate how loud
2 it was, how it appeared to him, as he was not watching, he
3 wasn't outside with them.

4 THE COURT: Let's just have him describe it, rather
5 than have him demonstrate it. Because then you're going to
6 have to describe it. So let's just have him describe it how
7 it appeared to him from inside the house.

8 MS. WONG: Your Honor, the jury is hear and they'll
9 be able to hear how Mr. Xu has the impression of the knocking.

10 THE COURT: All right, so, Mr. Xu, if you'll --
11 there's really no good way to do this, because you want him to
12 then have his back to the jury and knock on this door back
13 here?

14 MS. WONG: Your Honor, either that or perhaps next
15 to the jury box, but I believe it would be most effective
16 against the wall.

17 THE COURT: Okay, Mr. Xu, if you would stand for a
18 moment.

19 And, Madam Interpreter, if you ask him to stand over
20 here by this door behind him. And be careful as you get down.
21 All right.

22 And if you can demonstrate how the individual
23 knocked on your door in September 2018; is that what you're
24 asking?

25 MS. WONG: Yes, Your Honor.

XU JIN - CROSS - MS. WONG

1 THE COURT: All right, so if you can demonstrate.

2 A I did not see them in the door. But I can just imagine
3 it based on what I heard how they knocked on the door.

4 THE COURT: I don't want you to do that, I don't
5 want you just to make it up.

6 There are two components to this, Ms. Wong, you want
7 to see the actual physical gesture, which he cannot show you
8 because he did not see it.

9 MS. WONG: No, not the physical gesture, rather the
10 sound as he heard it from inside of the house where he
11 testified he was.

12 THE COURT: We're not going to do that. Have a
13 seat.

14 Because it certainly is dependent on the material
15 that he knocked on, and right now we have no indication that
16 anything in this courtroom is comparable.

17 You can have him describe it, if you like. You can
18 even have him, if you want, knock on the witness stand and say
19 it's similar. But beyond that, I'm not going to have a
20 reenactment of any kind, which we really can't do in this
21 courtroom.

22 But you have his testimony that he didn't see the
23 actual gesture when the person was knocking, but at most he
24 heard the sound. So why don't you start off by having him
25 describe the sound and the intensity or the volume.

XU JIN - CROSS - MS. WONG

1 Q Mr. Xu, can you please describe the sound and the
2 intensity of knocking?

3 A It was a pounding sound, it was not a knocking sound. It
4 was the person using his palm to pound on the door.

5 THE COURT: Based on hearing, correct?

6 THE WITNESS: Yes.

7 THE COURT: Do want to ask him what material it
8 sounding like they were hitting on? Wood? Glass? Metal?

9 MS. WONG: No, Your Honor.

10 I have no further questions about the knocking.

11 THE COURT: Okay.

12 Q Mr. Xu, to your understanding, are you receiving any
13 benefit whatsoever from the government based on your testimony
14 today?

15 A I don't feel that way. No, I don't.

16 Q Mr. Xu, have you asked for any assistance in regards to
17 immigration from the government in connection with this case?

18 A I don't remember I said so, and I don't remember I made
19 such a request.

20 Q Mr. Xu, in October of 2019, did you meet with FBI Special
21 Agent Robert Reilly and provide a EB-5 denial letter for you
22 and your wife?

23 MR. HEEREN: Objection, Your Honor.

24 THE COURT: Sustained.

25 MS. WONG: No further questions.

XU JIN - CROSS - MS. WONG

1 THE COURT: So, ladies and gentlemen, disregard the
2 question and the answer.

3 But let's have a quick sidebar.

4 (Continued on the next page.)

5 (Sidebar conference.)
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SIDEBAR CONFERENCE

1 (The following occurred at sidebar.)

2 THE COURT: The reason I sustained the objection is
3 as to form.

4 If you wanted to show him the 302 to see if that
5 refreshes his memory, I would allow that, but I don't want you
6 reading it into the record.

7 He said he didn't remember. If you want to pursue
8 this, go ahead, but you need to show him the document and ask
9 him if it refreshes his memory.

10 MS. WONG: No, I don't want to do that.

11 THE COURT: Okay.

12 (End of sidebar conference.)

13 (Continued on the next page.)

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XU JIN - CROSS - MR. TUNG

1 (In open court; Jury present.)

2 THE COURT: Mr. Tung, your witness.

3 CROSS-EXAMINATION

4 BY MR. TUNG:

5 Q Good morning, Mr. Xu.

6 A Good morning.

7 Q My name is Kevin Tung. I'm the attorney for the
8 defendant Yong Zhu here.

9 Mr. Xu, do you know this person who is standing up
10 right now? Do you know this person?

11 A I don't know him.

12 Q Mr. Xu, if you do not know him, have you seen this person
13 ever coming to your residence in New Jersey?

14 A I am not sure, because when the two people came to my
15 home, there was another person in the car. And on the second
16 day when the guy in the white top came to my home with the
17 car, there was another person in that car, but I cannot see it
18 clearly, so I'm not sure if he went there or not.

19 Q Well, my question is to you, do you, have you seen this
20 person appearing as your property in Warren, New Jersey?

21 You, not from him, whether or not he's hiding in the
22 car. Have you?

23 A I'm not sure, because the person I saw with an older
24 person who was older than the other two young men, so I'm not
25 sure whether it was him.

XU JIN - CROSS - MR. TUNG

1 Q Do you understand my question, sir?

2 MR. HEEREN: Objection, Your Honor.

3 THE COURT: Well, that's just a question, do you
4 understand his question?

5 Go ahead. You can answer that.

6 A I understand.

7 Q Did you understand what I was asking? I'm asking, did
8 you see this person?

9 MR. HEEREN: Objection. Asked and answered.

10 THE COURT: Overruled. One last time.

11 Did you see --

12 MR. TUNG: This person appearing at your property?

13 THE COURT: In September 2018, correct?

14 MR. TUNG: Any time.

15 Q At any time?

16 Sir, I'm not asking you --

17 THE COURT: Wait, the answer hasn't been given in
18 English yet.

19 A I'm not sure. My feeling is that I'm not sure. Because
20 when the two people came to my home, there was also another
21 older man.

22 Now when I see him, and in order for me to associate
23 him with that person, I cannot distinguish between the two.
24 But he was older.

25 Q Mr. Xu, you're educated, I'm not asking you to speculate.

XU JIN - CROSS - MR. TUNG

1 Do you understand?

2 MR. HEEREN: Objection, Your Honor.

3 THE COURT: Sustained. Sustained.

4 You've gotten your answer, Mr. Tung, let's move on.

5 MR. TUNG: I have no further questions.

6 THE COURT: Okay, thank you.

7 Redirect?

8 MR. HEEREN: No, Your Honor.

9 THE COURT: Okay, thank you very much, Mr. Xu,
10 you're free to go.

11 (The witness was excused.)

12 THE COURT: The government call your next witness.

13 MR. HEEREN: The government calls Special
14 Agent Neviene Habeeb. That's N-E-V-I-E-N-E, H-A-B-E-E-B.

15 (Continued on the following page.)
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HABEEB - DIRECT - MR. HEEREN

1 (In open court; Jury present.)

2 THE COURT: So, Ms. Habeeb, if you'll come forward
3 to the witness stand. And remain standing for a moment so we
4 can swear you in.

5 THE COURTROOM DEPUTY: Please raise your right hand.

6 (Witness takes the witness stand.)

7 **NEVIENE HABEEB**, called as a witness, having been first duly
8 sworn/affirmed, was examined and testified as follows:

9 THE WITNESS: I do.

10 THE COURTROOM DEPUTY: Thank you have a seat.

11 State and spell your name for the record.

12 THE WITNESS: Neviene Habeeb, N-E-V-I-E-N-E
13 H-A-B-E-E-B.

14 THE COURT: You may inquire, Mr. Heeren.

15 MR. HEEREN: Thank you, your Honor.

16 DIRECT EXAMINATION

17 Q Good afternoon, Special Agent Habeeb.

18 A Good afternoon.

19 Q Where do you work?

20 A I currently work for Homeland Security Investigations.

21 Q If you can just speak a little slower --

22 A Sorry.

23 Q -- for the court reporters. Thank you.

24 Is Homeland Security Investigations also known as
25 HSI?

HABEEB - DIRECT - MR. HEEREN

1 A Yes.

2 Q What is your position or job title?

3 A I am a group supervisor for the Human Trafficking Task
4 Force in New York.

5 Q And in addition to being group supervisor, are you also a
6 special agent?

7 A I am.

8 Q How long have you been with HSI?

9 A Approximately 20 years.

10 Q Were you involved in any way in the investigation of this
11 case for which you're testifying today?

12 A No.

13 Q Do you know someone named Michael McMahon?

14 A I do not.

15 Q I want to direct your attention to 2016. What were you
16 doing for Homeland Security Investigations at that time?

17 A At that time I was a special agent assigned to the
18 Organized Crime and Drug Enforcement Strike Force.

19 Q And what is the Organized Crime and Drug Enforcement
20 Strike Force?

21 A It's a DEA-led task force.

22 Q And so that I don't have to keep saying it, is that an
23 acronym O-C-D-E-T-F that's pronounced OCDETF?

24 A Correct.

25 Q So when you say it's a -- OCDETF strike force is a DEA

HABEEB - DIRECT - MR. HEEREN

1 task force, what do you mean by a task force?

2 A Basically it's one -- one task force with representations
3 from different agencies, local and federal.

4 Q So in addition to DEA, there's HSI as well?

5 A Correct.

6 Q When you say local, do you mean like NYPD?

7 A NYPD, and the New York State Troopers.

8 Q I think we've been just using the acronym DEA, are you
9 referring to the Drug Enforcement Administration?

10 A I am.

11 Q So during this time period, 2016, did you ever work
12 alongside agents of the Drug Enforcement Administration?

13 A I did.

14 Q Did you work on a particular squad at the strike force?

15 A I did. I worked in D53.

16 Q Sorry, what was the number again?

17 A D53.

18 Q Did that squad specialize in any particular type of work?

19 A Yes. We specialized in international narcotics
20 trafficking.

21 Q Were some of the DEA agents you worked with embedded in
22 the same squad as you?

23 A Yes.

24 Q Could you please describe your command structure for this
25 joint task force?

HABEEB - DIRECT - MR. HEEREN

1 A My direct supervisor was a DEA agent and we had a DEA
2 chain of command, but I also reported to an HSI supervisor and
3 had an HSI chain of command man.

4 Q Your immediate DEA supervisor at the time, was that a
5 group supervisor?

6 A Yes.

7 Q What's one level above your group supervisor?

8 A That would be ASAC, Associate Special Agent in Charge.

9 Q Who was the ASAC in 2016 over you and your group?

10 A At that time it was Greg Finning.

11 Q Is Gregory Finning's last name spelled F-I-N-N-I-N-G?

12 A I believe so.

13 Q So fair to describe him as your boss's boss?

14 A Correct. Yes.

15 Q How close were you to Greg Finning?

16 A I was not close to him at all.

17 Q I want to show you what's been previously admitted as
18 Government's Exhibit 306. 306, I believe 306A.

19 MR. HEEREN: Sorry, your Honor, we can take this
20 down for one second, I want to double check if we admitted
21 this.

22 THE COURTROOM DEPUTY: It's not.

23 MR. HEEREN: If we can put it up just for the
24 witness and defense counsel only.

25 My apologies, your Honor. 306A. One second.

HABEEB - DIRECT - MR. HEEREN

1 (Pause in proceedings.)

2 Q Special Agent Habeeb, if we can please -- Ms. McMahon,
3 zoom in on the user information section of this exhibit.

4 So first, looking at the billing address, do you see
5 a redacted billing address here?

6 A I do.

7 Q Have you seen a version of this with an unredacted
8 billing address?

9 A I have.

10 Q I can show that to you as well if you need it.

11 Do you remember what this billing address is
12 associated to?

13 A It's the DEA building in New York City.

14 Q If we can scroll down a little bit.

15 THE COURT: I think perhaps if you could pull the
16 microphone a little closer to you, some members are having
17 difficulty hearing you.

18 THE WITNESS: I'm sorry.

19 THE COURT: So ask the question again. I'm sorry,
20 Mr. Heeren.

21 MR. HEEREN: That's all right.

22 Q You see an address, an redacted address in both the
23 billing address and user address field in this exhibit.

24 Do you see that?

25 A I do.

HABEEB - DIRECT - MR. HEEREN

1 Q Have you had an opportunity to previously review what the
2 billing address and user address is?

3 A I did.

4 Q What is that address associated with?

5 A It's the DEA building in New York City.

6 Q Have you previously had the opportunity to review the
7 email address associated with this information?

8 A I did.

9 Q Is that email address associated with someone named
10 Lauren Ramirez?

11 A Yes.

12 Q Who do you know Lauren Ramirez to be?

13 A She's a person in DEA that hands out phones.

14 (Court reporter asks for clarification.)

15 THE COURT: While we're doing it, did you want to
16 admit this first, because you're asking a lot of questions
17 about it.

18 MR. HEEREN: Sure, your Honor, I was trying to lay a
19 foundation but I'm happy to admit it first.

20 THE COURT: Okay. Is there any objection to
21 admission of this billing document?

22 MR. LUSTBERG: Yes, your Honor. I don't think
23 we've -- I'm not sure there's been a foundation laid for it.
24 Is it being admitted as a business -- I just haven't heard the
25 foundation.

HABEEB - DIRECT - MR. HEEREN

1 MR. HEEREN: So there's a stipulation to it as
2 business record for authenticity purposes --

3 THE COURT: Why don't we just move it in that way.
4 So why don't you refer to the stipulation or refer the defense
5 to the stipulation so that we could --

6 MR. HEEREN: Move it along. Yes, your Honor.

7 THE COURT: Yes.

8 MR. LUSTBERG: Thank you.

9 MR. HEEREN: The stipulation is Government
10 Exhibit 201 at paragraph 6 which refers to the complete set of
11 records that this is associated with.

12 Government Exhibit 306 consists of true and accurate
13 copies of telephone records obtained from AT&T Corporation,
14 which records include toll records relating to a cellular
15 telephone assigned number (646)529-4233.

16 THE COURT: So you're going move it in pursuant to
17 that stipulation. Any objection?

18 MR. LUSTBERG: No objection, Judge. I just didn't
19 connect the two.

20 MS. WONG: No, your Honor.

21 MR. TUNG: No.

22 THE COURT: Okay. So 306A is admitted pursuant to
23 stipulation.

24 (Government Exhibit 306A, was received in evidence.)

25 MR. HEEREN: If we can go back now, can we publish

HABEEB - DIRECT - MR. HEEREN

1 306A for the jury.

2 (Exhibit published.)

3 MR. HEEREN: First, blow up the top, the wireless
4 subscriber information.

5 Q Just to reorient the jury, Special Agent Habeeb, does
6 this appear to be AT&T subscriber information and billing
7 records?

8 A It does.

9 Q Now going back down, if you can blow up the billing party
10 and user information so -- apologies to ask this again, just
11 so the jury can see it.

12 I believe your testimony previously was the billing
13 address and user address is both associated with the DEA, one
14 of the DEA's addresses in New York?

15 A Yes, that's correct.

16 Q And you indicated that the email address was associated
17 with a person named Lauren Ramirez; is that right?

18 A Correct, yes.

19 Q I think that's where we left off.

20 Who do you understand Lauren Ramirez to be?

21 A She gives out the DEA phones.

22 Q Just to be clear, do you see in the user information a
23 portion that says MSISDN?

24 A I do.

25 Q There is a phone number after that?

HABEEB - DIRECT - MR. HEEREN

1 A Yes.

2 Q That ends 4233?

3 A Yes.

4 Q Is that your phone number?

5 A No, it is not.

6 Q Do you recognize it?

7 A I don't.

8 MR. HEEREN: You can take that down now.

9 Q As part of your jobs as a Department of Homeland Security
10 special agent, are you generally familiar with Department of
11 Homeland Security databases?

12 A I am.

13 Q Is one type of database the TECS, T-E-C-S, database?

14 A Yes.

15 Q Is another DHS database known as the CLAIMS, C-L-A-I-M-S,
16 database?

17 A Yes.

18 Q Can you just very briefly summarize the types of data
19 contained in those databases?

20 A The old TECS contained anything that I can use in an
21 investigation. Anything from travel to deconfliction for case
22 management. CLAIMS is used for immigration claims basically.

23 Q Can you obtain information about a person's travel from
24 the United States to a foreign country in Department of
25 Homeland Security databases?

HABEEB - DIRECT - MR. HEEREN

1 A I can.

2 Q Is the travel information sometimes known as exit
3 information?

4 A It is.

5 Q Why is it called exit information?

6 A The passenger's exiting or departing from the U.S.

7 Q Is a person's exit information sensitive information --

8 A It is.

9 Q Why.

10 A It's somebody's personal information.

11 Q And does it relate to -- what does it relate to?

12 A The person's travel history. The passenger's travel
13 history.

14 Q Does it indicate when they are going to particular
15 foreign countries?

16 A Yes.

17 Q In addition to where they're traveling, can you obtain
18 other information about a person from Department of Homeland
19 Security databases?

20 A I can.

21 Q Is some of that information sensitive personal
22 information?

23 A It is.

24 Q Can you provide any general examples?

25 A Person's date of birth, the person's passport, passport

HABEEB - DIRECT - MR. HEEREN

1 numbers. A lot of private information is included.

2 Q Are Department of Homeland Security databases used for
3 law enforcement purposes?

4 A It is.

5 Q Do they contain information related -- without telling me
6 about any of them, do they contain information related to
7 ongoing federal criminal investigations?

8 A Yes.

9 Q As an HSI agent, do you receive training on the proper
10 handling of information from Department of Homeland Security
11 databases?

12 A We do.

13 Q Do you receive retraining --

14 A Yes.

15 Q -- from time to time?

16 A Yes.

17 Q Sorry just wait until I finish my answers -- questions.

18 Does this training include who you can share data
19 with?

20 A Yes.

21 Q And does the training include training on the proper
22 handling of data?

23 A Yes.

24 Q And in your experience, what does your training say about
25 sharing Department of Homeland Security database information

HABEEB - DIRECT - MR. HEEREN

1 with people outside of law enforcement?

2 A You cannot.

3 Q What if they are former law enforcement?

4 A No.

5 Q What if they are a private detective?

6 A No.

7 Q Now you said you worked alongside the DEA, does the DEA
8 have their own federal government databases?

9 A Yes.

10 Q And based on your experience working alongside them, do
11 DEA agents receive training as well on the handling of their
12 information?

13 A Yes.

14 Q Now does DEA databases contain all of the same data
15 that's contained in Department of Homeland Security databases?

16 A No.

17 Q Now in the normal course of your work, do you share
18 Department of Homeland Security database information with
19 other law enforcement?

20 A Yes.

21 Q And can you please explain to me again, at a very general
22 level, when and why you do that?

23 A Especially on a task force we work in a joint
24 investigation, so something that I would bring to an
25 investigation, another agency would not be able to get without

HABEEB - DIRECT - MR. HEEREN

1 my -- without it coming from me.

2 Q And so will you -- in addition to who you share it to,
3 does the purpose that -- the purpose for which the information
4 is being used, does that matter in terms of whether you are
5 permitted to share the information?

6 A It would always be for an investigation.

7 Q So I guess my point, if I understand you correctly, if
8 it's not for an investigation or some other law enforcement
9 purpose, is it your understanding of whether you can share it?

10 A I cannot share it if it's not for an investigation or for
11 a law enforcement purpose.

12 Q Based on your experience, would you face consequences if
13 you knowingly shared Department of Homeland Security database
14 information with a third party without the proper authority
15 you described?

16 A I believe I would.

17 Q Based on your experience working alongside them, is it
18 your understanding that DEA agents -- well, do you have an
19 understanding of whether DEA agents are allowed to share
20 information outside of -- Department of Homeland Security
21 information outside of law enforcement without homeland
22 security permission?

23 A No, they cannot.

24 Q Why not?

25 A It's part of the -- it's law enforcement sensitive.

HABEEB - DIRECT - MR. HEEREN

1 Q What do you mean by law enforcement sensitive?

2 A It's basically we're able to use it for law enforcement
3 investigative reasons and it's not to be shared with the
4 public or for outside people.

5 Q In 2016, did DEA agents that you worked with typically
6 have direct access to the Department of Homeland Security
7 databases?

8 A They did not.

9 Q Who, again, at the strike force in 2016, who typically
10 controlled access to those databases?

11 A Homeland agents.

12 Q So what did DEA agents have to do if they wanted
13 information from Homeland Security databases?

14 A An agent would come up to me and ask me, do mind running
15 this person or seeing -- getting information off this person
16 from your systems.

17 Q And so I take it from your answer in your role as an HSI
18 agent, did you run database queries from time to time?

19 A Yes, always.

20 Q In addition to running database queries yourself, can you
21 ask Homeland Security support personnel to conduct database
22 queries for you?

23 A Yes.

24 Q What is the name of the group of people who does that?

25 A LESC.

HABEEB - DIRECT - MR. HEEREN

1 Q Just a little bit slower, please.

2 A LESC.

3 Q What does LESC stand for?

4 A I believe Law Enforcement Support Center.

5 Q And have you, in the past, made requests to LESC for
6 information?

7 A I have.

8 Q In the ordinary course of your work -- this may have been
9 answered but just to be clear, in the ordinary of course of
10 your work would you sometimes run or request queries for other
11 agents you worked with?

12 A Yes.

13 Q You testified earlier that in 2016 Greg Finning was a
14 supervisor, a DEA supervisor within your chain of command; is
15 that right?

16 A Correct.

17 Q As one of your supervisors could Greg Finning request
18 that you run or request -- that you run or request information
19 from a Department of Homeland Security database?

20 A It would be unusual. He's not my direct supervisor and
21 he's a supervisor.

22 Q But could, if wanted to --

23 A If he wanted to --

24 Q -- could he do so?

25 A -- yes.

HABEEB - DIRECT - MR. HEEREN

1 Q How -- would he typically make that request directly or
2 indirectly?

3 MR. LUSTBERG: Objection, your Honor. There's been
4 no testimony as to what he typically would or wouldn't do.

5 THE COURT: Overruled. Can you answer that
6 question.

7 A One more time. I'm sorry.

8 Q Sure. I think you testified earlier that you didn't have
9 much contact with Greg Finning.

10 A Correct.

11 Q Based on your experience with your contact with him --
12 and you also testified that Greg Finning could make requests
13 as a senior supervisor over you?

14 A Correct.

15 Q In your experience, would he make that request directly
16 or indirectly?

17 A He's never made that request directly to me.

18 Q So would that request -- how would that request come down
19 to you then?

20 A It would be through someone else.

21 MR. HEEREN: I want to show you what's been marked
22 for identification only as Government's Exhibits 424, 425 and
23 429. I'm going to show you each of them individually and then
24 I'm going to ask you some questions about them.

25 425 now please.

HABEEB - DIRECT - MR. HEEREN

1 Before we get to 429, do you recognize Government
2 Exhibits 424 and 425?

3 A I do.

4 Q What are they?

5 A They are a call master record of a call that I made.

6 Q What, generally speaking, what is a call master record?

7 A It's just a record of -- of -- basically of a phone log
8 of a phone call that was made.

9 Q Within the Department of Homeland Security?

10 A Yes.

11 Q And without saying the specific information, what sort of
12 information, generally, is the call master record related to?

13 A A query that was made.

14 Q Now looking at Government's Exhibit 429.

15 This is a two-page exhibit. If you could look at
16 both the first page and then the second page.

17 If you can blow up the top. Thank you.

18 Do you recognize Government Exhibit 429?

19 A I do.

20 Q What is Government's Exhibit 429?

21 A It's a CLAIMS printout.

22 Q Can you explain what a CLAIMS printout is generally,
23 without describing the information contained therein?

24 A It's basically a person's immigration status.

25 Q Apart -- what's the first page of Government's

HABEEB - DIRECT - MR. HEEREN

1 Exhibit 429?

2 A I believe it was an email.

3 Q Can you just go back to it.

4 A It's an email from the Law Enforcement Support Center to
5 me.

6 Q Apart from your cover email, are the records I just
7 showed you, Government's Exhibits 424, 425 and 429, records
8 reflecting information from Department of Homeland Security
9 databases?

10 A Yes.

11 Q Are these records made at or near the time or from
12 information transmitted by someone with knowledge of the
13 events reflected in the records?

14 A Yes.

15 Q Are the records kept in the course of the Department of
16 Homeland Security's regularly conducted activities?

17 A Yes.

18 Q And is making these records a regular practice of the
19 Department of Homeland Security?

20 A Yes.

21 MR. HEEREN: Move to admit Government's
22 Exhibits 424, 425 and 429. The cover email we would not seek
23 to admit for its truth.

24 MR. LUSTBERG: No objection.

25 MS. WONG: No objection.

HABEEB - DIRECT - MR. HEEREN

1 MR. TUNG: No objection.

2 THE COURT: Admitted. You may publish.

3 (Government Exhibits 424, 425 and 429, were received
4 in evidence.)

5 (Exhibit published.)

6 MR. HEEREN: Let's please first look at Government
7 Exhibit 424. If you could please blow that up, Ms. McMahon.
8 Thank you.

9 Q Now that the jury can see it, Special Agent Habeeb, can
10 you please tell us what this is again?

11 A It's the call master record.

12 Q And who was the caller for this call?

13 A I was.

14 Q So is this -- you testified earlier about how you can
15 run -- you can either run checks directly or call people for
16 information, is this an example of how you can call for
17 information?

18 A Yes.

19 Q And directing your attention to the subject information,
20 do you see that?

21 A Yes.

22 Q Who is the subject listed here?

23 A It's last name is X-U, first name Jin, J-I-N.

24 Q And what's the year of the date of birth?

25 A 1965.

HABEEB - DIRECT - MR. HEEREN

1 Q When was this call master record entered as reflected in
2 the top left a corner?

3 A November 1st, 2016. They highlighted the wrong one.

4 Q Is now the right area where it's entered highlighted?

5 A Yes.

6 Q And if you look at the bottom left corner it says,
7 Synopsis with some information, and Narrative with some
8 information. Do you see that?

9 A I do.

10 Q What do you understand that to reflect?

11 A That was the databases that were checked for my query.

12 Q Turning to the next one, 425 please. If we can just blow
13 this up as well.

14 Is this another call master record?

15 A It is.

16 Q What was the date that this one was entered?

17 A It's November 1st, 2016.

18 Q And are there two subjects whose information you queried
19 this time?

20 A Yes.

21 Q What were their names?

22 A X-U J-I-N, is the first one. The second one is L-I-U
23 F-A-N-G, Fang.

24 MR. HEEREN: We're going to come back to this but
25 let me go to Government Exhibit 429 now previously admitted.

HABEEB - DIRECT - MR. HEEREN

1 Q So now I'm just going to the second page of the record.

2 So what is this record again?

3 A It's the immigration record for that person.

4 Q And what is the person's name, according to the record?

5 A X-U is the last name, first name J-I-N.

6 Q And then -- one second. Going back to the first page,
7 the email itself, when was this email sent to you?

8 A November 1st, 2016.

9 Q And we see in the signature block, a person whose
10 information includes law enforcement specialist, Law
11 Enforcement Support Center; is that right?

12 A Correct.

13 Q Is that what you were referring to as LESC?

14 A Yes.

15 Q I just want to flag for your attention -- well --
16 withdrawn.

17 MR. HEEREN: You can take that down now.

18 Q How many Homeland Security database queries would you say
19 approximately you've run in your career?

20 A Thousands.

21 Q Do you have any specific recollection of requesting the
22 information reflected in the exhibits you were just shown?

23 A I don't have a recollection of actually doing it, but I
24 do have a recollection of the CLAIMS form.

25 Q What is your general recollection then?

HABEEB - DIRECT - MR. HEEREN

1 A I just thought -- once I saw it, the CLAIMS form, I
2 thought it looked weird.

3 Q Why -- let's put up the CLAIMS form again, 429 please.
4 If you can blow it up.

5 Why did this CLAIMS form look weird to you?

6 A At that time I was not investigating any Chinese
7 organized crime subjects. My focus was -- I had middle
8 eastern targets that I was investigating and my group did not
9 investigate domestic targets, we investigated international
10 targets.

11 Q I would just note, where is this -- the person who is
12 being looked up located, according to the record?

13 A In New Jersey.

14 Q Just to be clear, do you believe you ran these queries
15 for any investigation you were working on?

16 A I did not.

17 Q So if you didn't do, do you have a specific recollection
18 of who requested that you ran these queries?

19 A I don't remember specifically who asked me to run the
20 query.

21 Q Do you have a general recollection of any of the persons
22 or people who were involved in any way with these queries?

23 A At the time I do remember that it had something to do
24 with Greg Finning, but I don't remember exactly how or why.

25 Q Do you have any recollection other than that about it?

HABEEB - DIRECT - MR. HEEREN

1 A I do not.

2 MR. HEEREN: I want to show you what's been admitted
3 into evidence as Government's Exhibit 4006B at page 818.

4 Q Do these appear to be chat messages, Special Agent
5 Habeeb?

6 A Yes.

7 MR. LUSTBERG: Your Honor, I object to this line of
8 questioning. I don't understand how she can add to anything
9 having to do with these. And I'd like to be heard, if the
10 Court --

11 THE COURT: Sustained.

12 MR. HEEREN: Your Honor, could we have a very brief
13 sidebar?

14 THE COURT: Sure.

15 (Continued on the next page.)
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HABEEB - DIRECT - MR. HEEREN

1 (The following occurred at sidebar.)

2 THE COURT: I'm assuming these are texts between the
3 Defendant McMahon and Greg Finning.

4 MR. HEEREN: That's right, your Honor. What I want
5 to show is that you will see in the text messages the
6 information requested and I want her to compare that
7 information to her records that --

8 THE COURT: You can do that during argument. She's
9 not an appropriate person for that. You're just going to have
10 her read into the record --

11 MR. HEEREN: I just want to ask her if the
12 information that she had is the same information reflected in
13 that exhibit.

14 THE COURT: The report back, that is?

15 MR. HEEREN: So the database records, there's three
16 different ones and there's different types of information in
17 that exhibit, but I think I can show to compare them -- and I
18 don't know that's too far afield, I can be very brief with
19 it -- I don't think it's too far afield to show, for example,
20 one of the records reflects exit data, a date when a person
21 left and I want to point to an email where that same data was
22 found and I want to ask her, is that the same information.

23 THE COURT: This is really the subject of argument,
24 but I'll let you show just the one text that had that
25 information. Because right now what you're showing appears to

HABEEB - DIRECT - MR. HEEREN

1 be the request from Mr. McMahon to Mr. Finning to run the
2 search, I think --

3 MR. HEEREN: Understood.

4 THE COURT: -- and you can't get it in through this
5 witness.

6 MR. HEEREN: Okay.

7 THE COURT: So you can show her the one that had the
8 exact information that you wanted her to confirm is the same
9 as the record that she searched.

10 MR. HEEREN: Okay.

11 MR. LUSTBERG: Just for the record, I object to
12 this. I think the Court was correct in its initial reaction,
13 which is if the government wants to show that this chat
14 included the same information as what she's just testified to
15 with those records, they can put those side by side at the
16 time of argument. It's not appropriate for them to ask this
17 witness about these chats in which she had no knowledge
18 whatsoever, wouldn't, and by the way, I should note, that she
19 has said that -- all she has said is she has a recollection
20 that this request had something to do with Greg Finning, but
21 she also testified that she doesn't remember ever getting a
22 request from Mr. Finning. So I think this is argument and I
23 think that allowing the government to tie these two things
24 together through this witness is completely inappropriate. I
25 just want to be clear.

HABEEB - DIRECT - MR. HEEREN

1 THE COURT: All right. Overruled. Ask your one
2 question, though, make it limited.

3 MR. HEEREN: Yes, your Honor.

4 (End of sidebar conference.)

5 (Continued on the next page.)

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HABEEB - DIRECT - MR. HEEREN

1 MR. HEEREN: If we can just please put up
2 Government's Exhibit 4006B at page 822, and if I can direct
3 the witness there's a binder over your right shoulder there.

4 THE COURT: Let's just focus in on the one box in
5 front of the jury.

6 MR. HEEREN: Yes. Please. Blow that all the way
7 up. Thank you, your Honor.

8 Q So just to save the Court's time, do you see a name and
9 other information in this chat box?

10 A I do.

11 Q And then below the first set there's a second name and
12 additional information?

13 A Yes.

14 Q And have you had an opportunity to review the unredacted
15 version of this exhibit?

16 A I did.

17 Q And is the information in the unredacted version
18 personally identifiable information?

19 A Yes, it is.

20 MR. HEEREN: And I want to show you, turning you
21 back to Government's Exhibit 425. If you could please blow up
22 the subject information.

23 Q Are the two names in this record the same names reflected
24 in that text message?

25 A They are.

HABEEB - DIRECT - MR. HEEREN

1 Q Have you had a chance to look at the unredacted date of
2 births for these two individuals?

3 A I did.

4 Q Are the date of births the same date of birth information
5 as reflected in Government's Exhibit 4006 --

6 A Yes.

7 Q -- B?

8 And just directing your attention again in 425 --
9 first, if you can close that up. If we can go to the date
10 entered again.

11 This was entered on 11/1/2016 at 2:40 p.m.; is that
12 fair?

13 A Yes.

14 (Continued on the next page.)
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HABEEB - DIRECT - MR. HEEREN

1 DIRECT EXAMINATION (Continued)

2 MR. HEEREN: Going to Government's Exhibit 424.

3 (Exhibit published.)

4 MR. HEEREN: Please blow up the subject information
5 again.

6 Q And is that the same name and date of birth information
7 as reflected in the text messages?

8 A Yes.

9 MR. HEEREN: And going back to the date entered
10 information, please, Ms. McMahon.

11 Q What was the date and time this information was entered?

12 A 11/1/2016 at 2:58 p.m.

13 Q Okay.

14 MR. HEEREN: You can close that up.

15 Going back to Government's Exhibit 429, page 2,
16 please.

17 Can you blow that up.

18 Q Does the claims record in Government's Exhibit 429 also
19 include the person's mother's and father's name?

20 A Yes.

21 Q And do you -- without reading it, do you see that the
22 name information in this record?

23 A I do.

24 Q And if you look at the top right corner, does that
25 reflect the date and time when this query was made?

HABEEB - DIRECT - MR. HEEREN

1 A It does.

2 Q And that also was at November 1st, 2016 at 2:58 p.m.?

3 A Yes.

4 MR. HEEREN: Okay, I want to go back to Government's
5 Exhibit 425, please.

6 And if we can just blow up the portion of it that
7 relates to the person identified as Liu Feng.

8 Q Do you see where it says "subject left"?

9 A Yes.

10 Q That's says subject left on 8/18/2015?

11 A Yes.

12 MR. HEEREN: I want to show you what's previously
13 admitted as Government's Exhibit 3051.

14 And I just want to highlight the top most email.

15 (Exhibit published.)

16 MR. LUSTBERG: Same objection, Your Honor.

17 THE COURT: Overruled. But, again, with the
18 government focussing on the particular information.

19 Q Directing your attention to the sentence in the email --
20 excuse me, the subject of the email, what is the subject of
21 the email?

22 A It's Fang Liu exit information.

23 Q Okay. And do you see the sentence that begins "Fang Liu
24 left Los Angeles"?

25 A Yes.

HABEEB - DIRECT - MR. HEEREN

1 Q On August 8th, 2015?

2 A Yes.

3 Q And August 8th is different than August 18th, there's no
4 "1" on the front, right?

5 A Correct.

6 Q On a plane bound for Australia.

7 Did I read that part right?

8 A Yes.

9 MR. HEEREN: One second, Your Honor.

10 (Pause in the proceedings.)

11 MR. HEEREN: Just a few more questions.

12 Q Special Agent Habeeb, I believe you testified earlier
13 that you weren't very close to Greg Finning?

14 A Correct.

15 Q In your experience, have you ever heard Greg Finning
16 refer you to as his HSI guy?

17 A No.

18 MR. HEEREN: One second, Your Honor.

19 (Pause in the proceedings.)

20 MR. HEEREN: Going back to Government's Exhibit 429.

21 Can we just blow up the red text at the bottom.

22 (Exhibit published.)

23 Q And so was this warning on the email that you received
24 with the Department of Homeland Security database records?

25 A Yes.

HABEEB - CROSS - MR. LUSTBERG

1 Q And among other things, does it indicate that it is not
2 to be released to the public or other personnel who do not
3 have a valid need to know without prior approval of an
4 authorized DHS official?

5 A Yes.

6 MR. HEEREN: No further questions, Your Honor.

7 THE COURT: Thank you.

8 Cross-examination?

9 And bear in mind we're going to break for lunch a
10 few minutes about of 1, Mr. Lustberg.

11 Which obviously doesn't mean you have to limit
12 yourself.

13 MR. LUSTBERG: No, no, no. No worries, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. LUSTBERG:

16 Q Just a couple of questions, Special Agent Habeeb. Good
17 afternoon.

18 On direct examination, Mr. Heeren asked you whether
19 it was appropriate to use the information that's requested of
20 on for an ongoing criminal investigation.

21 Do you remember that?

22 A I do.

23 Q And you said, yes. And my question is only: When you
24 say "ongoing," it can also be at the outset of an
25 investigation; that is to say, it would be appropriate for you

HABEEB - CROSS - MR. LUSTBERG

1 to get a request for information that might lead to opening an
2 investigation as well, correct?

3 A Correct.

4 Q With regard to -- you said that the request that's at
5 issue here, you don't remember receiving that request from
6 Mr. Finning, right?

7 A Correct.

8 Q In fact, you said you don't remember -- receiving any
9 particular request from Mr. Finning; is that right?

10 A Correct.

11 Q Because it had something to do with that, right?

12 A Yes.

13 Q Okay. Were you aware that at that time Mr. Finning --
14 well he as the ASAP, right, for the DEA?

15 A Correct.

16 Q And that stands for assistance special agent in charge,
17 right?

18 A Yes.

19 Q Okay. And do you have any knowledge as to whether he was
20 doing any investigations into foreign money laundering?

21 A I have no idea.

22 Q So you don't know whether he was doing investigations
23 into money laundering in China?

24 A No.

25 MR. LUSTBERG: Okay, thank you.

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1 Your Honor, that's all I have. And I told you it
2 would be short.

3 THE COURT: Very impressive.

4 All right, any other cross-examination?

5 MS. WONG: No, Your Honor.

6 MR. TUNG: No, Your Honor.

7 THE COURT: All right, terrific.

8 So you may step down, and you're free to go. Thank
9 you.

10 Oh, I should have asked, any redirect?

11 MR. HEEREN: No, Your Honor.

12 (The witness was excused.)

13 THE COURT: So, ladies and gentlemen, since it's
14 will ten of one, let's break a little bit early. We'll still
15 stick with our 2:00 restart time, so you have until 2:00 for
16 lunch.

17 Don't talk about the case. Don't do any research.
18 Keep an open mind. And enjoy your lunch.

19 All rise.

20 (Jury exits the courtroom.)

21 THE COURT: Please be seated, everyone.

22 Just so you know, the jurors had asked Ms. Gonzalez
23 about -- as to how many more witnesses there are -- or rather
24 are going to be called in the trial. Obviously, I don't want
25 to relay that information to the jury, because obviously

PROCEEDINGS

1 there's no reliable way to do so, and I also don't want to set
2 certain expectations that may or may not come to pass.

3 But I would like to give them some guidance or
4 assurance about the expectation that the case -- or that
5 they'll get the case or start their deliberations next week,
6 but I want to confer can you folks first before I let
7 Ms. Gonzalez convey that message to them.

8 So by my count, the government has about ten
9 witnesses, or will have about ten witnesses on their list who
10 haven't been called after today. Because I think John Ross is
11 one of the witnesses who will testify today, right?

12 MR. HEEREN: Yes, Your Honor.

13 THE COURT: Okay, and then we have probably other
14 witnesses from the government; is that right?

15 MR. HEEREN: So, Your Honor, we're prepared to put
16 on John Ross, and we're also prepared to put on the video
17 related to Sabrina Xu. We didn't anticipate ending this early
18 with Mr. -- with these two witnesses.

19 So I will say we have cut down on our witnesses, and
20 so I can tell the Court who we have remaining next week, which
21 I think will get us -- I don't want to promise Monday, but I
22 think Monday, Tuesday is where we're heading.

23 THE COURT: Okay.

24 MR. HEEREN: And so the remaining witnesses that we
25 anticipate calling are Forensic Examiner Graff, Forensic

PROCEEDINGS

1 Examiner Davis, the New Jersey Motor Vehicle Commission
2 representative.

3 THE COURT: Hang on, that's Number 15?

4 MR. HEEREN: Yes.

5 THE COURT: Okay.

6 MR. HEEREN: Number 19, Special Agent Wheeler.
7 Number 22, Special Agent Rivera, and that is it.

8 THE COURT: About how 24, Special Agent Maguire?
9 Did he testify? Oh, I'm so sorry.

10 And then I'm gathering not 29, Sabrina herself.

11 MR. HEEREN: That's -- no, so that would be -- we
12 listed her, obviously, but that's the Rule 15 deposition.

13 THE COURT: Oh, that's right.

14 And are you going to play portions of it? Oh, when
15 you said video related to her, that's what you mean?

16 MR. HEEREN: Sorry, I wasn't clear.

17 So after Mr. Ross, we would intend to play the
18 Rule 15 clips.

19 THE COURT: And how long do you think the video is
20 going to be?

21 MR. HEEREN: Approximately 25 minutes, Your Honor.

22 THE COURT: And that's going to be this afternoon?

23 MR. HEEREN: Yes, Your Honor.

24 THE COURT: Okay. Just so I have a heads up, I
25 gather there are no lingering objections as to that

PROCEEDINGS

1 deposition, and both sides have agreed to the approximately
2 25-minute portions of it that will be played, correct?

3 MR. LUSTBERG: Correct.

4 MS. WONG: Right.

5 THE COURT: Mr. Tung?

6 MR. TUNG: Yes.

7 THE COURT: All right, good.

8 So it sounds like we're going to finish early today
9 then have about five witnesses on Monday, most of whom seem
10 custodial to some extent; is that fair to say?

11 MS. CHEN: Yes, Your Honor.

12 THE COURT: And I gather you're not calling
13 Mr. Finning himself; is that right? Mr. Finning you don't
14 anticipate calling him?

15 MR. HEEREN: We don't.

16 THE COURT: Agent Finning.

17 MS. CHEN: That's right.

18 I will note Special Agent Wheeler is a CASTE agent.
19 Her testimony will be a little more significant than what you
20 termed as the "custodial witnesses".

21 THE COURT: And that's C-A-S-T-E. All right, for
22 the court reporter.

23 All right, so the defense, obviously, has suggested
24 that they may put on varying degrees of cases.

25 I think, Mr. Tung, you've indicated your client is

1 likely to testify?

2 MR. TUNG: We still have not finally decided, but
3 mostly likely not.

4 THE COURT: Okay. Obviously I will inquire of them
5 later and advise them about their rights next week, but for
6 now, in terms of trying to give some guidance to the jury with
7 the disclaimer that there's no reliable way to predict how
8 things we will go, I will factor that in.

9 And then, Ms. Wong, Mr. Zheng will testify, you
10 think?

11 MS. WONG: No, I don't believe so.

12 THE COURT: And, Mr. Lustberg, you had previously
13 indicated that you do think Mr. McMahon will testify.

14 MR. LUSTBERG: That's correct, Your Honor. However,
15 we will have at least the time. I don't know how long, and
16 one of the elements that just occurred, which I think Your
17 Honor correctly perceived, is that we have a decision to make
18 now as to whether to call Mr. Finning. We understood the
19 government was going to, now we have to make that decision.

20 THE COURT: Okay.

21 MR. LUSTBERG: So which could affect the length of
22 our case, but to be clear I do not think, once we put on a
23 case, it will be more than a day and a half.

24 THE COURT: Okay.

25 MR. LUSTBERG: So I think we're in pretty good

PROCEEDINGS

1 shape.

2 THE COURT: All right. And the other defendants, do
3 you anticipate putting on a case, even if you don't call your
4 clients?

5 MS. WONG: I'm not currently sure, Your Honor. We
6 have provided a proposed witness that includes Chaohong Chen,
7 who we have subpoenaed. So we're making that determination.

8 THE COURT: All right. And do you have any estimate
9 of the length, if you call witnesses?

10 MS. WONG: Not more than, I would say, two hours.

11 THE COURT: And then, Mr. Tung?

12 MR. TUNG: We don't have a case to put on, Your
13 Honor.

14 THE COURT: Okay. And at this time, obviously,
15 things can change.

16 So as I said, I'm not, of course, holding anyone to
17 any of these estimates, but I think I can safely have
18 Ms. Gonzalez at least advise the jury that while I can't give
19 them any kind of witness count, it does appear that we
20 anticipate them getting the case some time by mid or late next
21 week -- well, by mid next week, Thursday, I guess is mid, but
22 I think that that's a safe estimate for them. I think getting
23 the case by Thursday.

24 MR. LUSTBERG: I mean, just to be candid, based on
25 even yesterday's conversation, we have a number of subpoenas

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1 out. We changed their dates. We figured, based on yesterday,
2 that we should be ready to go on Wednesday of next week, but
3 now it sounds like it maybe more like Tuesday, so we'll do our
4 best, but it's a little difficult, but we'll do our best.

5 THE COURT: Right. Please do whatever you can to
6 get your witnesses here by Tuesday. I recognize that if
7 they're not available we may have to take a day's break in the
8 proceedings. Because right now it sounds only maybe two of
9 the defendants will put on any kind of a case, but I don't
10 want the jury to come in for an hour's worth of testimony or
11 something like that. So more likely I will give them a day
12 off and then we will resume on Wednesday, if that's the
13 earliest that the witnesses can get here.

14 But bear in mind the jurors, based on the estimate
15 given during jury selection and I think at the beginning of
16 trial, are expecting that they'll be getting the case before
17 the end of next week. And some of them have already said that
18 they're not going to be available the week after or they have
19 some issues with the week after, not to mention that Monday is
20 a court holiday.

21 So, again, everyone will still have to do what they
22 think they must, with respect to their respective cases, but I
23 just want us all to be on the same wavelength with respect to
24 some potential time restrictions or pressures that we have.

25 So Monday we'll have a short -- well, no, we won't

PROCEEDINGS

1 have a short day, I'm sorry. Today we'll have a short day
2 sorry. But Monday we should have a full day.

3 Is there any chance you folks will finish before the
4 end of Monday, such that the defense should be ready to go?

5 MS. CHEN: It seems unlikely, Your Honor.

6 THE COURT: So I think the defense should plan on
7 starting on Monday morning, if possible. Tuesday morning, if
8 possible. My, gosh. Sorry guys, I lost track of the week.

9 MS. CHEN: Your Honor, I wanted to raise one issue,
10 just in advance of playing the Rule 15 deposition video, if
11 you could just give a short preamble to the jury as to what it
12 is, and that Judge Reyes presided, you might hear his voice.

13 THE COURT: Is that right?

14 MS. CHEN: Yes, so they are not surprised when they
15 do, in fact, hear his voice.

16 THE COURT: Right. And what I probably will say is
17 that there is a procedure to allow witnesses to be deposed
18 when they're not able to come in person.

19 I don't know if she appears visibly pregnant in the
20 deposition, maybe the jury will reach its own conclusions, but
21 I wasn't planning to explain why, but that the parties all
22 were able to participate in the deposition, if they chose to
23 do so, and that it was presided over by a magistrate judge
24 from this court, whose voice may be heard at various times
25 with respect to objections, I gather.

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1 MS. CHEN: I think the objections have been removed,
2 but Judge Reyes' voice is on the recording.

3 In addition, Your Honor, there's one exhibit that's
4 admitted through Ms. Zhu, which I understand Mr. Lustberg
5 withdraw his objection, but we would seek it to put it up at
6 the appropriate time.

7 THE COURT: Is it correct you withdrew your
8 objection?

9 MR. LUSTBERG: Yes.

10 THE COURT: All right, folks, we'll see you at 2:00.

11 (A recess was taken at 1:03 p.m.)
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AFTERNOON SESSION

(In open court; jury not present.)

THE COURT: Sorry, folks, we are a little late. I think the jury is all here.

So the next witness, we will have that.

MR. HEEREN: We are playing a video, the Rule 15, Your Honor.

THE COURT: That's fine.

We are going to go ahead and get the jury.

THE COURTROOM DEPUTY: All rise.

(The jury enters the courtroom.)

THE COURT: Please be seated, everyone.

Ladies and gentlemen of the jury, I hope you had a good lunch. We are going to resume with the Government's presentation of evidence, but we are going to play a video at this time of a deposition that was taken of a witness.

Now, under the Federal Rules, it's permissible for a witness to testify essentially through a deposition that's taken before the trial begins and at a different location than the trial itself when the witness is unavailable to testify in person. The parties all have an opportunity to be present at the deposition. So it is considered equivalent to having the witness testify in court.

In addition, for the deposition, a judge -- in this case, it wasn't me, but a different judge from our court

1 presided, in a sense, over that deposition in case any
2 disputes arose or things like that. So, occasionally, you're
3 going to hear the voice of that judge, Judge Reyes, who is
4 from this court also. So that's the other voice you might
5 here.

6 So it's about, how many minutes did you say, 25
7 minutes?

8 MS. CHEN: Yes.

9 THE COURT: About 25 minutes in length. It's going
10 to be played, I guess, on the overhead screen and on the
11 screens in front of you.

12 Is there anything else that we need to do before we
13 start playing this deposition.

14 MS. CHEN: No.

15 THE COURT: How about a least announcing who the
16 person is?

17 MR. HEEREN: Sure. Your Honor, the witness for the
18 Government is Xinzi Xu, X-I-N-Z-I, X-U. X-U is the last name.

19 THE COURT: All right. Go ahead and play the
20 deposition.

21 (Videotape deposition of Xinzi Xu played.)

22 THE COURT: That's the conclusion of the videotape;
23 correct?

24 MS. CHEN: Yes.

25 THE COURT: We can take this up later, but it seems

1 to me some exhibit has to be admitted into the record since
2 there was no transcription of the deposition itself just now;
3 secondly, I will admit Government Exhibit 107, which was
4 introduced in the video without objection, okay.

5 (Government Exhibit 107, was received in evidence.)

6 THE COURT: Next witness.

7 MS. ARFA: The Government calls John Ross.

8 THE COURT: Mr. Ross, if you will come up to the
9 witness stand and remain standing for one moment so we can
10 swear you in. Witness takes stand.)

11 THE COURTROOM DEPUTY: Please raise your right hand.

12 (Witness sworn.)

13 THE COURTROOM DEPUTY: Thank you. Have a seat.
14 Please state and spell your name for the record.

15 THE WITNESS: John Ross, R-O-S-S.

16 THE COURT: You may inquire.

17 And Mr. Ross, those waters are for you, I think from
18 the Government.

19 THE WITNESS: Thank you.

20 THE COURT: You can thank them.

21 Go ahead.

22 JOHN ROSS, called as a witness, having been first duly
23 sworn/affirmed, was examined and testified as follows:
24
25

Ross- direct - Arfa

1 DIRECT EXAMINATION

2 BY MS. ARFA:

3 Q Good afternoon, Mr. Ross.

4 A Good afternoon.

5 Q Are you currently employed?

6 A I'm retired.

7 Q Where were you employed prior to your retirement?

8 A At the U.S. Department of Justice assigned to the U.S.
9 Attorney's Office in the Joint Terrorist Task Force.

10 Q What was the title at the time of your retirement?

11 A Supervisory special agent.

12 Q What were your responsibilities in that position?

13 A I was responsible to supervise the special agents,
14 investigators, and NYPD detectives that were assigned to the
15 U.S. Attorney's Office, and also conduct investigations at the
16 Joint Terrorist Task Force.

17 Q For how long did you work for the U.S. Department of
18 Justice?

19 A For 20 years.

20 Q What was your position in October 2020?

21 A Supervisory special agent.

22 Q I would like to direct your attention now to October 28,
23 2020. Were you working that day?

24 A Yes.

25 Q What was your assignment that day?

Ross- direct - Arfa

1 A I was to assist with the potential interview of --
2 post-arrest interview of Michael McMahon.

3 Q Do you know around what time he was arrested?

4 A It was early in the morning. Around 7:00 a.m. maybe.

5 Q And do you know whether following his arrest Mr. McMahon
6 agreed to a voluntary interview?

7 A He did.

8 Q Following Mr. McMahon's arrest, was he, in fact,
9 interviewed?

10 A Yes.

11 Q Was anyone present at the interview other than Mr.
12 McMahon and yourself?

13 A Yes.

14 Q Do you recall who?

15 A Yes. Special Agent Sean McCarthy from the FBI.

16 Q Where was the interview conducted?

17 A At the FBI office in Northern New Jersey.

18 MS. ARFA: Your Honor, may I show the witness only
19 please what has been previously marked as GX13?

20 THE COURT: You may.

21 Q Do you recognize this?

22 A Yes.

23 Q What is it?

24 A A photo of Michael McMahon.

25 Q I'm going to ask you to pull the microphone a little

Ross- direct - Arfa

1 closer.

2 A It's a photo of Michael McMahon.

3 Q Is there a fair and accurate depiction of Mr. McMahon?

4 A It is.

5 MS. ARFA: The Government offers GX13 in evidence.

6 MR. LUSTBERG: No objection.

7 MS. WONG: No objection.

8 MR. TUNG: No objection.

9 THE COURT: Admitted. You may publish.

10 (Government Exhibit 13, was received in evidence.)

11 Q Now, for the jury's benefit, would you please tell us who
12 this is?

13 A Michael McMahon.

14 Q Okay.

15 MS. ARFA: May I now show for the witness only some
16 items on the ELMO, please.

17 THE COURT: All right.

18 MS. ARFA: I am showing the witness what has been
19 previously marked as -- let me start with GX701 -- well, it's
20 get to GX 701 and GX701A.

21 Q Let me begin with 701, do you recognize this?

22 A I do.

23 Q What is it?

24 A It's a thumb drive. It has the video/audio interview of
25 Michael McMahon on that day.

Ross- direct - Arfa

1 Q Have you reviewed this thumb drive and that content?

2 A Yes.

3 Q How do you know that?

4 A I initialed it and dated it.

5 Q And did this exhibit contain a true and accurate copy of
6 the video recording?

7 A It did.

8 Q Just to confirm, that's the video recording of your
9 October 28, 2020 interview of Mr. McMahon?

10 A It is.

11 Q And now turning to GX701-A, do you recognize that?

12 A Yes.

13 Q What is that?

14 A That's a USB thumb drive that contains a portion of that
15 interview on 10/28/20.

16 Q And does that exhibit, GX701A, contain a true and
17 accurate copy of an excerpt from that interview?

18 A It does.

19 MS. ARFA: The Government offers GX701A into
20 evidence.

21 MR. LUSTBERG: No objection.

22 MS. WONG: No objection.

23 MR. TUNG: No objection.

24 MR. LUSTBERG: I should say subject to prior
25 discussions with the Court. I don't want to waive --

Ross- direct - Arfa

1 THE COURT: All right. So admitted. You may
2 publish.

3 (Government Exhibit 701A, was received in evidence.)

4 MS. ARFA: The Government asks to publish to the
5 jury what marked as GX701C, which is a version of GX701A that
6 includes captions. We previously provided GX701C to defense
7 counsel, along with a transcript of the excerpt, which is
8 marked as GX701A.

9 THE COURT: So, ladies and gentlemen, as I
10 previously advised you, captions are simply an aid to your
11 listening and it's your hearing of what transpires during the
12 video that governs.

13 MS. ARFA: I apologize. Let me just correct, that
14 the transcript has been marked as GX701B. I apologize. I
15 think I misspoke a moment ago.

16 THE COURT: Okay.

17 MS. ARFA: May we please play GX107C?

18 THE COURT: I think it is 701. She said 107.

19 MS. ARFA: I'm sorry, 701.

20 THE COURT: Yes, 701. Go ahead.

21 (Video playing.) (Video stopped.)

22 MS. ARFA: Your Honor, a moment?

23 THE COURT: Yes.

24 MS. ARFA: No further questions.

25 THE COURT: All right.

Ross - cross - Lustberg

1 Cross-examination.

2 MR. LUSTBERG: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 CROSS-EXAMINATION

5 BY MR. LUSTBERG:

6 Q Good afternoon, Special Agent Ross.

7 A Good afternoon.

8 Q So, did I understand correctly that other than this
9 interview you did not work on the investigation of this
10 matter?

11 A That's correct.

12 Q And, but I take it that you had some briefing about the
13 case before you went into that interview?

14 A Yes, and I reviewed some case file.

15 Q Got it. So were you aware, for example, that when you
16 were interviewing Mr. McMahon -- by the way, you see Mr.
17 McMahon over there?

18 A I do.

19 MR. LUSTBERG: The record will reflect he has
20 identified Mr. McMahon, because it's a different -- it's a few
21 years later.

22 THE COURT: It will so reflect that he identified
23 the defendant, Mr. McMahon.

24 MR. LUSTBERG: Thank you, Your Honor.

25 Q So you knew when you were interviewing Mr. McMahon in

Ross - cross - Lustberg

1 October of 2020 that the events at issue had occurred in 2016
2 and 2017; correct?

3 A I did.

4 Q And the investigation had been going on throughout that
5 time period, from 2016, '17 up through 2020 when the arrests
6 were made; correct?

7 A Yes.

8 Q I take it you knew Mr. McMahon had never been interviewed
9 before during that time period; right?

10 A Correct.

11 Q And that -- so law enforcement had not had contact with
12 him about what was happening?

13 A Yes.

14 MS. ARFA: Objection.

15 THE COURT: Sustained. Overruled, actually.

16 To this witness' knowledge, is your question; right.

17 MR. LUSTBERG: Of course.

18 THE COURT: Okay.

19 Q Just based on the interaction, I take it you knew Mr.
20 McMahon had been a police officer before?

21 A Yes.

22 Q Okay. Now, I think you testified, I think you said this,
23 that he was arrested early in the morning; right?

24 A Yes.

25 Q And if I -- if I understood that video clip correctly,

Ross - cross - Lustberg

1 there came a time when I think somebody said, either you or
2 your colleague, that it was 8:30 in the morning; right?

3 A Yes.

4 Q Okay. And were you present for the arrest?

5 A I was.

6 Q And the arrest was at Mr. McMahon's home some distance
7 from the FBI headquarters there in northern New Jersey; right?

8 MS. ARFA: Objection.

9 THE COURT: Overruled.

10 A Yes.

11 Q And we just looked at excerpts of the video, of the
12 interview. You've -- do I take it that you've reviewed the
13 entire video at some point?

14 A I have.

15 Q And it's obviously much longer than that; right?

16 A Yes.

17 Q Would you say a couple hours, something like that?

18 A It's probably an hour and a half, more.

19 Q Fair enough.

20 And I think you testified right upfront that it was
21 a voluntary statement that Mr. McMahon made.

22 A It was.

23 Q He was administered his Miranda rights, he didn't invoke
24 his right to counsel and made a voluntary statement; right?

25 A That's right.

Ross - cross - Lustberg

1 Q And am I right that from the outset Mr. McMahon admitted
2 that he was a private investigator --

3 MS. ARFA: Objection.

4 Q -- right?

5 THE COURT: Sustained. Let's have a quick sidebar.

6 (Sidebar.)

7 (Continued on the next page.)

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Sidebar

1 (The following occurred at sidebar.)

2 MR. LUSTBERG: I was just going to -- I'm trying to
3 show that it was a voluntary statement and he admitted to some
4 very basic stuff about how -- I can tell you what I was going
5 to do -- I was a private investigator who worked on the case,
6 and they've kind of implicated that in even the questioning,
7 but I'm not going to go into any of the things that you ruled
8 against me on, that's for sure.

9 THE COURT: I will allow you to elicit from him that
10 he acknowledged he worked on this case as a private
11 investigator but no more.

12 MS. WONG: That's fine.

13 THE COURT: Obviously all the other statements are
14 pure hearsay.

15 MR. LUSTBERG: That's all that I was going to do.

16 THE COURT: All right.

17 (End of sidebar conference.)

18 (Continued on next page.)
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Ross - cross - Lustberg

1 (In open court.)

2 BY MR. LUSTBERG:

3 Q Special Agent Ross, Mr. McMahon acknowledged that he was
4 a private investigator who had worked on the case that you
5 were discussing with him?

6 A He did.

7 Q Okay. And he was cooperative; right?

8 A Yes.

9 Q Okay. Just one more set of questions. You reviewed
10 with him a statement he made with regard to harassing,
11 proposing harassment. Do you remember that?

12 A Yes.

13 Q And it appeared to me that you had some documents, you
14 and Mr. -- Agent McCarthy had some documents in front of you,
15 am I right?

16 A Yes.

17 Q What were those documents?

18 A They were printouts of the actual text messages.

19 Q Okay. So I'd like to just show you those text messages
20 and ask you a couple of questions about them since you were
21 asking him about them.

22 MS. ARFA: Objection.

23 THE COURT: Overruled. Mr. Lustberg, let's have a
24 sidebar. I think I know where this is going.

25 (Continued on the next page.)

1 (The following occurred at sidebar.)

2 THE COURT: I anticipate that you are going to ask
3 him, like you did with other witnesses, if he knows whether
4 Mr. McMahon provided these text messages?

5 MR. LUSTBERG: No.

6 THE COURT: But, again, in the lower right corner of
7 this document is there any indication that it has a McMahon
8 Bates stamp on it?

9 MR. LUSTBERG: I wasn't going to do that. Let me
10 explain what I'm going to do. So the discussion that we just
11 heard is one in which they ask him whether he proposed
12 harassing this witness. In fact, the e-mail exchange, which
13 is in evidence, doesn't say that. In the e-mail exchange what
14 happens is Mr. Gallowitz proposes it, and, so, they go
15 through --

16 THE COURT: You don't get that in through this
17 witness. You can certainly make that argument based on the
18 texts sent. You can't ask this witness about who proposed the
19 harassment.

20 MR. LUSTBERG: I was going to ask him about were the
21 very documents that he had in front of him showed, because --
22 because what they are doing in this particular interview, Your
23 Honor, is they're trying to get him to misrepresent what
24 actually happened.

25 THE COURT: That's your argument, but you can't use

1 this witness to endorse your theory that somehow the text
2 messages suggest that someone else proposed harassing the
3 witness and that's what you want to do. He's here purely to
4 say this is a statement we took from him. You can make your
5 argument later, but not through this witness.

6 MR. LUSTBERG: Okay. And then I will just ask him a
7 final question about he based his questions on the documents
8 he had in front of him and that will be it.

9 THE COURT: Okay.

10 (End of sidebar conference.)

11 (Continued on next page.)
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1 (In open court.)

2 BY MR. LUSTBERG:

3 Q Agent, the only question I have then is with regard to
4 the questioning you were asking him when you had those
5 documents in front of you, those questions were based upon the
6 documents that you had been provided?

7 A Yes.

8 MS. WONG: Okay. I have no further questions,
9 Judge.

10 THE COURT: Thank you very much, Mr. Lustberg.
11 Any other cross-examination, Ms. Wong.

12 MS. WONG: No, Your Honor.

13 THE COURT: Mr. Tung?

14 MR. TUNG: No, Your Honor.

15 THE COURT: Any redirect?

16 MS. ARFA: No, Your Honor.

17 THE COURT: Thank you very much, Special Agent Ross.
18 Any other witnesses at this time?

19 MS. ARFA: Not at this time, Your Honor.

20 (Witness steps down.)

21 THE COURT: So, ladies and gentlemen of the jury, as
22 sometimes happens, the expectations of a party calling a
23 witness aren't always fulfilled, I guess, or reliable in terms
24 of how long an examination will take. We find ourselves
25 ending a Friday again early, which is welcomed news. But the

1 good news is we are still on track and things are moving along
2 in terms of our overall time schedule as anticipated.

3 We're going to break now a little bit after 3:00.
4 Hopefully you will get a break on the traffic, we will see.
5 Remember, do not talk about the case. Do not do any research,
6 keep an open mind. And we will see you at Monday at 9:30
7 ready to go.

8 Have a wonderful weekend, everybody.

9 THE COURTROOM DEPUTY: All rise.

10 (Jury exits the courtroom.)

11 THE COURT: So, everyone else, have a seat. Okay.
12 That even went quicker than I anticipated. That's all good
13 because we are still on track, as I told the jury, for getting
14 the case before them by mid-next week, I'm hoping.

15 In terms of the jury charges, we will post those on
16 the docket, the first draft, so you can access it via ECF, and
17 then I will discuss with you on Monday when you would like to
18 have a charge conference. Hopefully you will have reviewed
19 them by then and can give me an idea of when it might fit in
20 in terms of the schedule. My assumption is perhaps right
21 after the Government rests we can go ahead and have a charge
22 conference. That might either be Monday or Tuesday evening.

23 MR. HEEREN: That's fine, Your Honor. The only
24 thing I would say obviously if there was something unusual or
25 unique that happens in the defense case, we might submit some

1 additional charges. But I don't anticipate that based on what
2 we have heard.

3 THE COURT: I'm sure it's true for both sides.

4 All right. Is there anything else that we need to
5 address before I let you all go for the weekend? The
6 Government?

7 MR. HEEREN: No, Your Honor.

8 MR. LUSTBERG: Nothing from the defense. Thank you,
9 Your Honor.

10 MS. WONG: No, Your Honor.

11 MR. TUNG: No, Your Honor.

12 THE COURT: Thanks. Everyone, have a good weekend.
13 We will see you all on Monday.

14 (Whereupon, the trial adjourned at 3:15 p.m.)

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